
FEATURE ARTICLE

Legislation for Fiscal Year 2008

By

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[Editor's Note: This summary is not legal advice and may not be relied on for official purposes. The reader should confer with one's assigned general counsel for any related legal analysis or advice. The complete report can be viewed at http://www.whitehouse.gov/omb/legislative/fy08consolidated_reductions_01_25_08.pdf.]

Introduction

Each year, the *DISAM Journal* publishes a summary of the legislation that impacts U.S. security assistance and other related international programs. This report is intended to alert all security assistance and security cooperation community members to the collective changes or continued requirements in legislation that will influence program planning and implementation for the coming year. This report is in outline form, with key topics highlighted to facilitate locating specific statutory references.

This article will not include the initial allocation figures for fiscal year (FY) 2008 programs since the required Department of State (DoS) report for the allocation of foreign operations funding to Congress in accordance with Section 653(a), of the *Foreign Assistance Act*, was not yet made available. This report is normally to be provided no later than thirty days after enactment of the annual *Foreign Operations Appropriation Act* (FOAA) which for the FY 2008 was enacted on 26 December 2007 as Division J, Public Law (P.L.) 110-161. A subsequent article will be published in the *Journal* once the initial funding allocations are made available.

Fiscal year 2008 marks the fifth out of six years in a row in which a rescission (reduction) of initially appropriated funds is to take place. Section 669P, P.L. 110-161, directs the across-the-board rescission of 0.81 percent for each FY 2008 discretionary DoS and foreign operations account, less those funds identified as an emergency requirement. The Office of Management and Budget (OMB) made the required report to Congress on 25 January 2008 providing the line-by-line rescission to be made for each FY 2008 discretionary account.

The FY 2008 appropriations season included four continuing resolutions (CRs) with the last one, P.L. 110-149, expiring at midnight, 31 December 2007. The 26 December 2007 enactment of the *Consolidated Appropriations Act* (CAA), 2008, P.L. 110-161, took place during this fourth period. Of the twelve required appropriations, the *Department of Defense Appropriations Act, 2008*, Division A, P.L. 110-116, 13 November 2007, was the only one not required to be included in the legislated CAA.

The following seven pieces of legislation are to be further summarized in this article as they relate to U.S. security assistance, security cooperation, and other international programs. Certain highlights within the laws are provided.

- *DoS, Foreign Operations, and Related Program Appropriations Act 2008* (FOAA) Division J, P.L. 110-161, 26 December 2007.

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- This law can be viewed on the internet at: <http://www.disam.dsca.mil/pubs/USG/DIVISION%20J--FOAA.pdf>.
 - In general, the final appropriations for the Economic Support Fund (ESF), International Military Education and Training (IMET), Foreign Military Financing Program (FMFP), and Peacekeeping Operations (PKO) matched the amounts recommended by the DoS.
 - For the first time the IMET funding is to remain available for an additional four years after the end of FY 2008.
 - The U.S. moratorium prohibiting the transfer of anti-personnel landmines was extended by six years to 23 October 2014.
 - The transfer of cluster munitions can only be done under very restrictive agreement conditions.
 - The annual Leahy Amendment regarding the human rights vetting of security force units or personnel prior to receiving U.S. assistance is now codified as Section 620J, in the FAA.
 - No FY 2008 assistance may be provided to a country that recruits or uses child soldiers.
 - *National Defense Authorization Act for Fiscal Year 2008*, (NDAA), P.L. 110-181, 28 January 2008.
 - This law can be viewed on the internet at: <http://thomas.loc.gov/cgi-bin/query/D?c110:2:./temp/~c110NCoL7o>.
 - Authorized the transfer of not more than three C-130s to Iraq.
 - Requires Department of Defense (DoD) contractors to provide goods or technologies subject to export control under the *Arms Export Control Act* (AECA) or the *Export Administration Act of 1979* (EAA) to comply with those laws and applicable regulations.
 - The U.S. Comptroller-General is to provide Congress an assessment of the recent Under Secretary of Defense for Policy (USD(P)) reorganization.
 - The DoD “1033” (NDAA, FY 1998) non-lethal counter-drug assistance program authority is further amended to include Mexico and the Dominican Republic.
 - The DoD “1208” (NDAA, FY 2005) support to foreign entities supporting U.S. special operations forces to combat terrorism authority is extended through FY 2010.
 - Up to \$75,000,000 in FY 2008 operations and maintenance (O&M) is authorized to provide assistance to Pakistan Frontier Corps conducting counterterrorism operations along the Afghanistan border.
 - The DoD “1207” (NDAA, FY 2006) authority for Security and Stabilization Assistance to DoS is extended through FY 2008.
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- The U.S. Comptroller-General is to provide Congress an extensive assessment of the Global Peace Operations Initiative (GPOI).
 - The limitation of military assistance required by the *American Servicemembers' Protection Act of 2002* (ASPA) is repeated.
 - A registration and monitoring system regarding the transfer and use of small arms in Iraq is to be established and implemented.
 - The DoD "1202" (NDAA, FY 2007) authority to loan certain significant military equipment (SME) using acquisition and cross-servicing agreements (ACSAs) is extended through FY 2009 and modified to include certain forces in combined operations or peacekeeping operations.
 - Authorizes the FY 2008 appropriation of \$3,000,000,000 for the Iraq Security Forces Fund (ISFF) and \$2,700,000,000 for the Afghanistan Security Forces Fund (ASFF).
 - *Department of Defense Appropriations Act, 2008*, P.L. 110-116, 13 November 2007.
 - This law can be viewed on the internet at:: <http://thomas.loc.gov/cgi-bin/equrys?c110:H.R.3222.enr>.
 - The law appropriates \$103,300,000 for DoD overseas Humanitarian, Disaster, and Civic Aid programs.
 - It continues to prohibit the export of the F-22.
 - *Emergency Supplemental Appropriations Act for Defense, 2008*, Division L., P.L. 110-161, 26 December 2007.
 - This law can be viewed on the internet at:: <http://www.disam.dsca.mil/pubs/USG/DIVISION%20L--DEFENSE.pdf>.
 - *North Atlantic Treaty Organization (NATO) Freedom Consolidation Act of 2007*, P.L. 100-17, 9 April 2007.
 - This law can be viewed on the internet at:: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbnaame=110_cong_public_law&f:public_laws&docid=f:pub1017.110.pdf.
 - It designates Albania, Croatia, Georgia, Macedonia, and Ukraine pursuant to the *NATO Participation Act of 1994* (NPA) being eligible to receive U.S. assistance to include excess defense articles (EDA), IMET, and FMFP.
 - These same five countries are also eligible to be designated as full and active participants in the Partnership for Peace (PfP) program.
 - *The Department of State Authorities Act of 2006*, P.L. 109-472, 11 January 2007.
 - This law can be viewed on the internet at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ1472.109.pdf.
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- This law authorizes the Secretary of State to secure, remove, or eliminate stocks of man-portable air defense system (MANPADS), small arms, light weapons, stockpiled munitions, abandoned ordnance, and other conventional weapons.
 - The law authorizes the military assistance sanctioning of a government that knowingly transfers MANPADS to a government supporting terrorism or to a terrorist organization.
 - Further authorizes the transfer of war reserves stockpile to Israel in exchange for negotiated concessions.
 - Extends the FY 2003 authority for a loan guarantee to Israel through FY 2011.
 - *Implementing Recommendations of the 9/11 Commission Act of 2007*, P.L. 110-53, 3 August 2007.
 - This law can be viewed on the internet at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_public_laws&docid=f:pub1053.110.pdf.
 - The law authorizes the establishment of the Science and Technology Homeland Security International Cooperative Programs Office to support international cooperative activities with designated countries in support of U.S. homeland security.
 - The law precludes the provision of FY 2008 military assistance to Pakistan until determined it is committed, undertaking, and progressing in the elimination of terrorist organizations in Pakistan engaged in terrorist activities in neighboring Afghanistan.
 - It authorizes the presidential waiver of the annual Brooke Amendment and Military Coup prohibitions for Pakistan during FY 2007 and FY 2008.

Reference Sources

The following abbreviated titles will assist in identifying principal sources of information used in this article. The laws and associated congressional reports can be viewed at the Library of Congress “Thomas” web page located at <http://thomas.loc.gov>.

- *The Security Assistance Management Manual* (SAMM): The SAMM, DoD 5105.38-M, 3 October 2003, with changes. It is maintained electronically and can be viewed on the DSCA web page at: <http://www.dsca.mil/samm/>.
- The FAA as amended, P.L. 87-195, 4 September 1961 [22 U.S.C. 2151, et seq.].
- *Migration and Refugee Act of 1962*, P.L. 87-510, 28 June 1962 [22 U.S.C. 2601].
- The AECA, as amended, P.L. 94-329, 30 June 1976 [22 U.S.C. 2751, et seq.]
- *Taiwan Relations Act*, P.L. 96-8, 10 April 1979.
- *Peace Corps Act* (PCA), Title VI, P.L. 96-533, 16 December 1980.
- *Compact of Free Association*, P.L. 99-239, 14 January 1986.
- *Anglo-Irish Agreement Support Act of 1986*, P.L. 99-415, 19 September 1986.

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- *Support for East European Democracy Act of 1989* (SEED), P.L. 101-179, 28 September 1989.
 - *National Defense Authorization Act, Fiscal Year 1991* (NDAA), P.L. 101-510, 5 November 1990.
 - *National Defense Authorization Act, Fiscal Year 1993* (NDAA) P.L. 102-484, 6 October 1992.
 - *Freedom for Russia and Emerging Eurasian Democracies and Open Markets (FREEDOM) Support Act of 1992* (FSA), P.L. 102-511, 24 October 1992.
 - *National Defense Authorization Act, Fiscal Year 1994*, P.L. 103-160, 30 November 1993.
 - *NATO Participation Act of 1994* (NPA), P.L. 103-447, 2 November 1994.
 - To amend the *Foreign Assistance Act of 1961* (FAA) and the *Arms Export Control Act* (AECA), to make improvements to certain defense and security assistance provisions under those Acts, to authorize the transfer of naval vessels to certain foreign countries, and for other purposes, P.L. 104-164, 21 July 1996.
 - *National Defense Authorization Act Fiscal Year 1997* (NDAA), P.L. 104-201, 23 September 1996.
 - *National Defense Authorization Act Fiscal Year 1998* (NDAA), P.L. 105-85, 18 November 1997.
 - *Making Consolidated Appropriations for the Fiscal Year Ending September 30, 2000, and for Other Purposes*, P.L. 106-113, 29 November 1999.
 - *Making Appropriations for Foreign Operations, Export Financing, and Related Programs for the Fiscal Year Ending September 30, 2001, and for Other Purposes*, P.L. 106-429, 6 November 2000.
 - *An Act to Authorize the President to Exercise Waivers for Foreign Assistance Restrictions with Respect to Pakistan through September 30, 2003, and for Other Purposes*, P.L. 107-57, 27 October 2001.
 - *Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002*, P.L. 107-115, 10 January 2002.
 - *2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States*, P.L. 107-206, 2 August 2002.
 - *American Service-Members' Protection Act of 2002* (ASPA), Title II, P.L. 107-206, 2 August 2002
 - *Homeland Security Act of 2002* (HSA), P.L. 107-296, 25 November 2002.
 - *Afghanistan Freedom Support Act of 2002* (AFSA), P.L. 107-327, 4 December 2002.
 - *National Defense Authorization Act Fiscal Year 2004* (NDAA), P.L. 108-136.
 - *Department of Defense Appropriations Act 2005*, P.L. 108-287, 5 August 2004.
 - *Ronald W. Reagan National Defense Authorization Act Fiscal Year 2005*, P.L. 108-375, 28 October 2004.
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- *National Defense Authorization Act for Fiscal Year 2006* (NDAA), P.L. 109-163, 6 January 2006.
 - *National Defense Authorization Act Fiscal Year 2007* (NDAA), P.L. 109-364, 17 October 2006.
 - *Department of State Authorities Act of 2006*, P.L. 109-472, 11 January 2007.
 - *9/11 Commission International Implementation Act of 2007*, Title XX, P.L. 110-53, 3 August 2007.
 - *Department of Defense Appropriations Act 2008*, Division A, P.L. 110-116, 13 November 2007.
 - *Consolidated Appropriation Act, 2008* (CAA), P.L. 110-161, 26 December 2007.
 - *Department of State, Foreign Operations, and Related Programs Appropriations Act 2008*, Division J, P.L. 110-161, 26 December 2007.
 - *Emergency Supplemental Appropriations Act for Defense 2008*, Division L, P.L. 110-161, 26 December 2007.
 - *National Defense Authorization Act Fiscal Year 2008* (NDAA), P.L. 110-181, 28 January 2008.
 - *Refugee Crises in Iraq Act of 2007* (RCIA), Sections 1241-1249, P.L. 110-181, 28 January 2008.

Department of State, Foreign Operations, and Related Programs Appropriations Act, 2008, Division J, P.L.110-161, 26 December 2007

- Originally reported out of the House Appropriations Committee (HAC) and the Senate Appropriations Committee (SAC) as H.R. 2764 with H.R. 110-197 on 18 June 2007 and S.Rpt. 110-128 on 10 July 2007, respectively. The HAC and SAC passed their versions of H.R. 2764 on 22 June and 6 September 2007, respectively. With no filed conference report, the bill became Division J of the *Consolidated Appropriation Act, 2008*, (CAA, FY 2008) which was finally enacted on 26 December 2007 as P.L.110-161.
 - After attempts over the recent years by the SAC, this year marks the first FY that appropriations for the DoS and foreign operations (S/FOAA, FY 2008) have been combined into one bill and finally law. In the past, the DoS appropriation has been a part of the Department of Commerce, Department of Justice, and DoS, Department of the Judiciary, and Related Agencies appropriation or lately the Science, DoS, Justice, Commerce, and Related Agencies appropriation.
 - Table One provides an overview for FY 2008 security assistance funding to include the President's request within the Congressional Budget Justification (CBJ), the HAC proposal for H.R. 2764, the SAC proposal for H.R. 2764, and the initial amounts appropriated within Division J, P.L.110-161.
 - Division J provides an initial appropriation for each program and designates an amount of the initial appropriation as an emergency requirement in accordance with Section 5 of the CAA, FY 2008. Later Section 699P of Div. J, S/FOAA, FY 2008, directs the **rescission (reduction) by 0.81 percent** of each discretionary account in Division J, less any funding identified as an emergency requirement. The rescission is to be applied proportionally, within each discretionary account and item, to each program, project,
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and activity delineated in Division J or accompanying explanatory statements for the relevant FY covering the account or item. This rescission is to be similarly applied for accounts and items not included in the Division J as delineated in the most recently submitted President's budget.

Table One
Fiscal Year 2008 Security Assistance Proposal and Appropriation

Program	Administration Request	House Proposal	Senate Proposal	Initial Appropriation
FMFP	\$4,536,000,000	\$4,509,236,000	\$4,579,000,000	\$4,588,325,000
IMET	89,500,000	85,076,000	85,877,000	85,877,000
ESF	3,319,567,000	2,671,506,000	3,015,000,000	3,009,823,000
PKO	<u>221,200,000</u>	<u>293,200,000</u>	<u>273,200,000</u>	<u>263,230,000</u>
Total	\$8,166,267,000	\$7,559,018,000	\$7,953,077,000	\$7,947,255,000

- Table Two provides a quick-look at the four traditional security assistance program FY 2008 appropriations including FMFP, IMET program, ESF, PKO. The table includes the initial appropriation, the amount of funding identified as an emergency requirement (exempted from the rescission), the amount of the rescission, and the total or final appropriation remaining for allocation.

Table Two
Fiscal Year 2008 Security Assistance Appropriation and Rescissions

Program	Initial Appropriation	Emergency Requirement	.81 pct Rescission	Final Appropriation
FMFP	\$4,588,325,000	\$100,000,000	\$36,355,430	\$4,551,969,570
IMET	85,877,000		695,600	85,181,400
ESF	3,009,823,000	542,568,000	19,984,770	2,989,838,230
PKO	<u>263,230,000</u>	<u>25,000,000</u>	<u>1,929,660</u>	<u>261,300,340</u>
Total	\$7,947,255,000	\$667,568,000	\$58,965,460	\$7,888,289,540

Title IV, Military Assistance, International Military Education and Training

- Initially appropriates \$85,877,000 as IMET grant assistance to carry out the provisions of Section 541, FAA, of which \$3,000,000 may remain available until expended. No IMET funding is identified as an emergency requirement. After the 0.81 percent rescission, the final amount remaining for allocation is \$85,181,400.
- No IMET funding shall be available for **Equatorial Guinea**.
- Other than Expanded IMET (E-IMET) funding, IMET for **Guatemala** shall be only available for the Guatemalan Air Force, Navy, and Army Corps of Engineers and only after the Secretary of State certifies that these organizations are respecting human rights, and civilian judicial authorities are investigating and prosecuting, with the military's cooperation, military personnel who have been implicated in gross violations of human rights. Any IMET provided to the Army Corps of Engineers is only for training to improve disaster response capabilities and to participate in international peacekeeping operations.

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- Only E-IMET may be provided to **Libya Cameroon, Central African Republic, Chad, Côte d'Ivoire, Guinea, Nepal, and Angola.**
 - Any civilian personnel for whom IMET funding is used may include non-governmental organization civilians whose participation would contribute to improved civil-military relations, civilian control of the military, or respect for human rights.
 - Any funding provided for non-government organizations and funds made available for **Haiti, Libya, Angola, the Democratic Republic of the Congo, Guatemala, and Nigeria** may only be provided through regular notification procedures of the congressional appropriations committees. The notifications shall include details of the proposed activities.
 - Though not included in the final legislation, the Senate proposed also to include **Cameroon, Central African Republic, Chad, Côte d'Ivoire, Guinea, and Nepal.**
 - A report to the congressional appropriations committees not later than sixty days after enactment is required addressing how the **Western Hemisphere Institute for Security Cooperation (WHISC)** IMET program for FY 2008 will contribute to the promotion of human rights, respect for civilian authority and the rule of law, the establishment of legitimate judicial mechanisms for the military, and achieving the goal of right sizing military forces. The requirement of this report was proposed by the House and was included in the final legislation.
 - Within H.Rpt.110-279, for the FY 2008 DoD appropriations bill, H.R. 3222, the HAC supports the mandate of WHISC to be a transparent and democratic institution. To promote these values, the HAC “directs the Institute” to make public the names of all students and instructors for FY 2005 and FY 2006. The listing is to include all names including but not limited to the first name, middle, and maternal and paternal surnames, rank, country of origin, courses taken or taught, and years of attendance. This report is to be provided to the public no later than sixty days after the end of each FY.
 - Though not included in the final legislation, the HAC report noted that since 2000, Egypt and Israel have sent 4,082 and 1,726 students respectively to receive similar U.S. military training. The HAC also noted that Egypt had 151 students who have taken training that included Israeli students and Israel had 120 students who had taken training that included Egyptian students. The committee was encouraged by this observation and noted that soldiers who train together are more likely to foster cooperation in future operations. The DoS is encouraged to establish a program to promote such joint training. The HAC disregards the fact that Israel does not receive IMET assistance.
 - The HAC also expressed grave concern there may be a significant overlap and duplication of efforts between the DoS and DoD in the conduct of training the military of other countries. The committee is concerned that the DoD **Counterterrorism Fellowship Program (CTFP)** is, in fact, being used to circumvent congressionally mandated restrictions with regard to human rights. The committee directs the DoS to produce a report, in collaboration with the Secretary of Defense and the OMB, on the differences between IMET and CTFP.
 - 10 U.S.C. 2249c authorizes DoD to fund up to \$25,000,000 annually for the now titled Regional Defense CTFP.
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- It should be noted that the current HAC chairman, Representative David Obey (D-WI), was the chairman during the FY 1994 and FY 1995 legislative period when, for similar reasons, the IMET program was significantly reduced by fifty percent.

Title IV, Military Assistance, Foreign Military Financing Program

- Title IV initially appropriates \$4,588,325,325,000 as the FMFP grant assistance to carry out the provisions of Section 23, of the AECA. \$100,000,000 is identified as an emergency requirement. After the 0.81 percent rescission, the final amount remaining for allocation is \$4,551,969,570.
 - While understanding the need for rapid responses to U.S. security needs, the HAC expressed an extensive, lengthy concern for the need for a balanced military and economic assistance program under the direction of the Secretary of State to further U.S. foreign policy. The permanent and expanded DoD “1206” authority was criticized. The HAC report also included significant proposals with discussion for FMFP distribution throughout the world.
 - Not less than \$2,400,000,000 shall be available for **Israel** to be disbursed within thirty days of enactment. As agreed upon by Israel and the U.S., not less than \$631,200,000 of this funding shall be available for procurement in Israel of defense articles and services, to include research and development.
 - Not less than \$1,300,000,000 shall be available for **Egypt**. FMFP funds estimated to be outlayed for Egypt during FY 2008, shall be transferred to an interest bearing account for Egypt in the Federal Reserve Bank of New York within thirty days of enactment.
 - Not less than \$300,000,000 shall be available for **Jordan**. The original proposal by the House was \$200,000,000 as requested by the administration. However, the Senate raised the amount by fifty percent with the additional funding to be used for border security and counter-terrorism programs.
 - Not more than \$53,000,000 shall be available for **Colombia**, of which \$5,000,000 should be made available for medical and rehabilitation assistance, removal of landmines, and to enhance communications capabilities.
 - \$3,655,000 may be made available for assistance for **Morocco**. An additional \$1,000,000 may be made available if the Secretary of State certifies that the government of Morocco is continuing to make progress on human rights, and is allowing all persons to advocate freely their views regarding the status and future of **Western Sahara** through the exercise of their rights to peaceful expression, association and assembly and to document violations of human rights in that territory without harassment.
 - \$4,000,000 shall be transferred to and merged with funds appropriated under the heading “Diplomatic and Consular Programs” to be made available to the Bureau of Democracy, Human Rights and Labor to ensure adequate monitoring of the uses of assistance made available under this heading in countries where such monitoring is most needed. This is in addition to amounts otherwise available for such purposes. This was originally proposed by the Senate, but to be at 0.10 percent of the FMFP appropriated and to be merged with ESF for use by the Bureau of Democracy, Human Rights, and Labor. The SAC expressed concern with DoS’s capacity and procedures for **end-use monitoring** by the U.S. embassies with a requirement for additional resources.
 - No FMFP shall be available to finance the procurement of defense articles, services, or design and construction services that are not sold by the U.S. government in accordance
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with the AECA unless the country proposing to make such procurements has first signed an agreement with the U.S. government specifying the conditions under which such procurements may be financed with such funds.

- All country and funding level increases in allocations shall be submitted through regular notification procedures in Section 615 later in this Act.
- None of the FY 2008 FMFP funding shall be available for **Sudan**.
- None of the FY 2008 FMFP funding may be made available for **Haiti, Guatemala, Nepal, Sri Lanka, Pakistan, Bangladesh, Philippines, Indonesia, Bosnia and Herzegovina, Ethiopia, and the Democratic Republic of the Congo** except through regular notification procedures to the congressional appropriations committees.
 - The House proposal only included Haiti and Guatemala with the latter to also include a Secretary of State human rights compliance certification by the Guatemalan Air Force, Navy and Army Corps of Engineers. The certification requirement was not legislated.
 - The SAC expressed concern with the continuing crackdown by the Bangladeshi military-backed care-taker government possible misuse of Nonproliferation, Anti-terrorism, Demining, and Related Programs (NADR) or FMFP funded assistance of support the government's use of emergency powers to stifle peaceful dissent.
 - Recognizing the significant strides made by the **Indonesian** government in Aceh regarding democratic governance and counter-terrorism cooperation, the SAC remains concerned with the lack of progress in accountability of human rights violations, and anticipates further progress in strengthening the rule of law, military reform including budget transparency, and resolution of the situation in Papua. The committee recommended an additional \$2,000,000 above the requested \$15,700,000 when the Secretary of State reports that the Indonesian government has provided plans for effectively addressing these concerns.
 - The SAC also expressed concern with report of serious human rights abuses by the Ethiopian military against civilians and seeks assurance that monitoring is adequate to preclude U.S. equipment from going to such units that commit abuses, and the government is taking effective measures to bring to justice military personnel who are committing such crimes.
- Notwithstanding any other provision of law, FMFP may be used for demining, the clearance of unexploded ordnance, and related activities, to include activities implemented through nongovernmental and international organizations.
- Only those countries for which such assistance was justified for the FMFP in FY 1989 congressional presentation document may use funds made available under this heading for procurement of defense articles, services, design and construction services that are not sold by the U.S. government under the AECA. Per SAMM, C9.7.4.1, these countries include **Israel, Egypt, Jordan, Morocco, Tunisia, Turkey, Portugal, Pakistan, Yemen, and Greece**.
- Not more than \$41,900,000 of FY 2008 FMFP may be obligated for necessary expenses, including the purchase of passenger motor vehicles for replacement only for use outside the U.S., or for general costs of administering military assistance and sales. Though

not legislated, the HAC proposed an additional \$1,600,000, as requested, for African Military Health Affairs.

- Not more than \$395,000,000 of **foreign military sales (FMS) administration funds** realized pursuant to Section 21(e)(1)(A), AECA, may be obligated for expenses incurred by DoD during FY 2008 pursuant to Section 43(b), AECA. This limitation may be exceeded only through regular notification procedures of the congressional appropriations committees.

Title IV, Military Assistance, Peacekeeping Operations

- Initially appropriates \$263,230,000 as PKO grant assistance to carry out the provisions of Section 551, FAA. \$25,000,000 is identified as an emergency requirement. After the 0.81 percent rescission, the final amount remaining for allocation is \$261,300,340.
- Not less than \$25,000,000 shall be made available for the U.S. contribution to the **Multinational Force and Observers (MFO)** mission in the Sinai. This is \$4,000,000 above the administration's request. The SAC expects this increase to be applied to MFO monitoring efforts along the **Egyptian-Gaza border**.
- In response to the administration's request to use PKO funding for support of the Center of Excellence for Stability Police Units, located in Italy, the HAC does not concur and does not recommend as such. It is further stated that PKO funding should not be used for Section 660, FAA, prohibiting police training. However, the committee does support the proposed program and expects the administration to use, with the necessary authority, other accounts such as the International Narcotics Control and Law Enforcement (INCLE) account in conjunction with G-8 (United Kingdom, France, Germany, Italy, Japan, Canada, Russia, and the United States) nations combined efforts.
- The HAC included \$176,000,000 for PKO activities in Africa. The committee expressed distress the administration did not request funding for continued support of the **African Union Mission in Sudan (AMIS)** and requested an inadequate amount for within the Contribution for International Peacekeeping Account (CIPA) for the U.N. peacekeeping efforts. The DoS is urged to exercise a stronger international leadership role in the **Darfur peacekeeping** activities.
- The HAC also included \$95,200,000 for the G-8 **GPOI** with an emphasis in Africa. GPOI is a G-8 collaboration initiated in 2005 with the goal of training 75,000 peace support troops worldwide. It was noted that, to date, the activities have expanded to include eighteen partner countries with 19,191 troops trained thus far. The committee commended GPOI efforts in the Asia-Pacific region and encouraged growth into other regions. HAC also requested that the FY 2009 funding request include a detailed summary of GPOI achievements and include specific information linking the request to FY 2009 performance objectives. An early submission of this report is encouraged.

Title III, Bilateral Assistance, Other Bilateral Economic Assistance, Economic Support Fund

- Initially appropriates \$2,994,823,000 as ESF grant assistance to remain available until 30 September 2009 to carry out the provisions of Chapter 4 of Part II of the FAA. \$542,568,000 of this amount is identified as an emergency requirement.
 - An additional \$15,000,000 is appropriated under the ESF authority as the U.S. contribution to the **International Fund for Ireland** and shall be made available in

accordance with *Anglo-Irish Agreement Support Act of 1989*, P.L.99-415. None of this funding is identified as an emergency requirement.

- After the 0.81 percent rescission, the final ESF amount remaining for allocation is \$2,989,838,230.
- FY 2008 marks the end of **ESF funding for Israel** based on a ten-year agreement to reduce ESF assistance at a rate of \$120,000,000 each year and to increase FMFP assistance at a rate of \$60,000,000 each year. Israel is to receive \$2,400,000,000 in FY 2008 FMFP assistance.
- Not less than \$415,000,000 shall be made available for **Egypt**. A cash transfer assistance shall be provided with understanding that Egypt will undertake significant economic and democratic reforms which are additional to those which were undertaken in previous years. With respect to the provision of this assistance for democracy, human rights, and governance activities, the organizations implementing such assistance and the specific nature of that assistance shall not be subject to prior approval by the government of Egypt.
 - Not less than \$135,000,000 of this funding shall be made available for project assistance. Not less than \$20,000,000 of this portion shall be used for democracy, human rights, and governance programs. Not less than \$50,000,000 shall be used for education programs, of which not less than \$10,000,000 should be used for scholarships for Egyptian students with high financial need to attend U.S. accredited institutions of higher education in Egypt.
 - The HAC expressed concern for religious freedom in Egypt and believes the government of Egypt needs to provide full opportunity for Coptic Christians in education and employment.
 - The committee did not agree with the administration's request for \$298,000,000 in the **ESF for Iraq**; however, the committee recommended not less than \$10,000,000 should be used to assist religious minorities in the Nineveh Plain.
 - The HAC included several other worldwide concerns and recommended funding to assist countries and regions. The SAC did likewise in its committee report.
- \$11,000,000 should be available for **Cyprus** to used only for scholarships, administration support of the scholarship program, bicommunal projects, and measures aimed at reunification of the island and designed to reduce tensions and promote peace and cooperation between the two communities on Cyprus.
- Not less than \$363,547, 000 shall be only for assistance to **Jordan**, of which up to \$40,000,000 may be transferred to and merged with funds under the heading "Debt Restructuring" to reduce or cancel any amounts owed by Jordan to the U.S. or any agency of the U.S.
- Not more than \$218,500,000 may be used for assistance for the **West Bank and Gaza** of which not exceeding \$2,000,000 may be used for the United States Agency for International Development (USAID) administration expenses in carrying out any programs in the West Bank and Gaza.
- If the President exercises the waiver authorized by later Section 650 of this Act, not more than \$100,000,000 may be used for cash transfer assistance to the **Palestinian Authority**. However, the Secretary of State must first certify and report to the

congressional appropriations committees that the Palestinian Authority has established a single treasury account for all Authority financing and all financing mechanisms flow through this account, the Authority has eliminated all parallel financing mechanisms outside of this new account, and has established a single comprehensive civil service roster and payroll. None of this cash transfer funding to the Palestinian Authority may be used for salaries of personnel of the Authority located in Gaza, assistance to Hamas or entity effectively controlled by the Hamas, or any power-sharing government with the Hamas unless the Hamas has accepted the principles within Section 620K(b)(1)(A) and (B), FAA. The Secretary of State shall ensure that Federal and non-Federal audits of all funds cash transferred under this authority to the Palestinian Authority are conducted at least annually.

- \$45,000,000 shall be used for assistance to **Lebanon** of which not less than \$10,000,000 should be used for scholarships and direct support of American educational institutions in Lebanon.
- Not more than \$300,000,000 may be obligated for assistance to **Afghanistan** until the Secretary of State certifies to the congressional appropriations committees that the government of Afghanistan at both the national and provincial level is cooperating fully with U.S.-funded poppy eradication and interdiction efforts. The President may waive this restriction if determined to be vital to U.S. national security interests.
- \$196,000,000 of FY 2008 ESF funding shall be apportioned directed to USAID for alternative development and institution building and sustainable development programs in **Colombia**, and may be transferred and merged with funds under the “Development Assistance” heading. Decision-making responsibility for the use of this funding shall be the Administrator of USAID in consultation with the Assistant Secretary of State for International Narcotics and Law Enforcement Affairs.
- Up to \$1,000,000 of the funds used for assistance for the **Democratic Republic of Timor-Leste** may be used for USAID administration expenses.
- Notwithstanding any other provision of law, FY 2008 ESF funding may be used for programs and activities in the central highland of **Vietnam**.
- Notwithstanding any other provision of law, up to \$53,000,000 may be used for energy-related assistance for **North Korea** subject to regular notification procedures to the congressional appropriations committees.
- Any FY 2008 ESF funding to be used for a **Middle East Financing Facility, Middle East Enterprise Fund**, or any other similar entity in the Middle East shall be subject to the regular notification procedures to the congressional appropriations committees.

Other State and Foreign Operations, Export Financing, and Related Programs Appropriations for FY 2008

The following includes FY 2008 appropriations for programs funded by Division J, P.L.110-161, that may be of potential interest to the security assistance or security cooperation communities. Unless otherwise noted, the funding for each program does not include the directed 0.81 percent rescission.

Title I, Department of State and Related Agencies, Department of State, Administration of Foreign Affairs, Diplomatic and Consular Programs

- Appropriates \$4,385,042,000 for DoS and Foreign Service expenses. Identifies \$575,000,000 as an emergency requirement.
- No funds may be obligated or expended for processing licenses for the export of satellites of U.S.-origin to the **People's Republic of China** unless the congressional appropriations committees are notified at least fifteen days in advance.
- Appropriates \$974,760,000 for worldwide security protection costs of which \$206,632,000 is identified as an emergency requirements.

Payment to the American Institute in Taiwan

- Appropriates \$16,351,000 for expenses in carrying out the *Taiwan Relations Act*, P.L.96-8.

International Organizations, Contributions to International Organizations

- Appropriates \$1,354,400,000 for expenses necessary to meet annual obligations of membership in international multilateral organizations, pursuant to treaties ratified by the Senate, conventions or specific acts of Congress.

Contributions for International Peacekeeping Activities

- Appropriates \$1,700,500,000 for expenses to pay assessed and other expenses of international peacekeeping activities directed to the maintenance or restoration of international peace and security. \$468,000,000 is identified as an emergency requirement.
- None of these funds are to be expended for a new or expanded U.N. peacekeeping mission unless the applicable congressional committees are notified at least fifteen days prior to the U.N. vote for such action.

Title III, Bilateral Economic Assistance

Development Assistance

- Appropriates \$1,636,881,000 for expenses to carry out Sections 103, 105, 106, and 251 – 255, and Chapter 10, Part I, FAA.

International Disaster Assistance

- Appropriates \$432,350,000 for expenses for international disaster relief, rehabilitation, and reconstruction assistance pursuant to Section 491, FAA. \$110,000,000 is identified as an emergency requirement.

Transition Initiatives

- Appropriates \$45,000,000 for expenses for international rehabilitation and reconstruction assistance pursuant to Section 491, FAA. This is to support transition to democracy and to long-term development of countries in crisis.

Other Bilateral Economic Assistance, Assistance for Eastern Europe, and the Baltic States

- Appropriates \$295,950,000 for expenses to carry out the provisions of the FAA and the SEED. No funding is identified as an emergency requirement.

Assistance for the Independent States of the Former Soviet Union

- Appropriates \$399,735,000 for expense to carry out Chapters 11 and 12, Part I, FAA, and the *FREEDOM Support Act*. No funding is identified as an emergency requirement.

Independent Agencies, Peace Corps

- Appropriates \$333,500,000 for expenses to carry out the provisions of the *Peace Corps Act*.

Department of State Democracy Fund

- Appropriates \$164,000,000 for expenses to carry out the provisions of the FAA for the promotion of democracy globally. No funding is identified as an emergency requirement.
- \$64,000,000 for Human Rights and Democracy Fund of the Bureau of Democracy, Human Rights, and Labor. \$15,000,000 shall be for democracy and the rule of law programs in the **People's Republic of China, Hong Kong, and Taiwan**. Any assistance for Taiwan should be matched from sources other than the U.S. government. \$5,000,000 shall be for programs and activities for the promotion of democracy in countries outside of the Middle East which have a **significant Muslim population**. \$15,000,000 shall be for an Internet freedom initiative in closed societies, including the Middle East and Asia.
- \$100,000,000 for the National Endowment for Democracy. Of the FY 2008 funds appropriated under the headings of "Development Assistance," "Economic Support Fund," "Assistance for Eastern Europe and the Baltic States," and "Assistance for the Independent States of the Former Soviet Union", an additional \$11,000,000 should be made available to support the ongoing programs of the National Endowment for Democracy.

International Narcotics Control and Law Enforcement

- Appropriates \$558,449,000 to carry out the INCLE expenses authorized by Section 481, FAA, to remain available until 30 September 2010. No funding is identified as an emergency requirement.
- No funding is to be used for counter-narcotics eradicating programs in Afghanistan using aerial spraying of herbicides.
- Not less than \$39,750,000 shall be used for judicial, human rights, rule of law and related activities in **Colombia**.
 - Not less than \$20,000,000 of this funding shall be for the Office of the Attorney General to include \$5,000,000 for the Human Rights Unit, \$5,000,000 for the Justice and Peace Unit, \$7,000,000 to support a witness protection program for victims of armed groups, and \$3,000,000 for investigations of mass graves and identification of remains.
 - \$8,000,000 shall be used for human rights activities in Colombia.
 - \$5,500,000 shall be used for judicial reform in Colombia.
 - \$3,000,000 shall be for the Office of the Procuraduria General de la Nacion.
 - \$2,000,000 shall be for the Office of the Defensoria del Pueblo.

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- \$750,000 should be for a U.S. contribution to the Office of the United Nations High Commissioner for Human Rights in Colombia to support monitoring and public reporting of human rights conditions in the field.

Andean Counterdrug Programs

- Appropriates \$437,460,000 for expenses to support Section 481, FAA, counterdrug activities in the Andean region of South America to remain available until 30 September 2010. No funding is identified as an emergency requirement.
- No U.S. military or civilian contractor employer by the U.S. will participate in any combat operation in connection with assistance made available by this Act.
- Rotary and fixed wing aircraft supported by this Act for assistance to Colombia may be used for aerial or manual drug eradication and interdiction including to transport personnel and supplies and to provide security for such operations, and to provide transport in support of alternative development [programs and investigations of cases under the jurisdiction of the Attorney General, the Procuraduria General de la Nacion, and the Defensoria del Pueblo.

Migration and Refugee Assistance

- Appropriates \$1,029,900,000 to remain available until expended for expenses necessary for the Secretary of State to provide, as authorized by law, a contribution to the International Committee of the Red Cross, assistance to refugees, including certain other international organizations and activities to meet refugee and migrations needs. \$200,000,000 is identified as an emergency requirement.
 - Not more than \$23,000,000 may be used for administration expenses.
 - Not less than \$40,000,000 shall be used for **refugees resettling in Israel**.
 - These funds shall be available for assistance for **refugees from North Korea**.

U.S. Emergency Refugee and Migration Assistance Fund

- Appropriates \$45,000,000 to remain available until expended for expenses to carry out Section 2(c), *Migration and Refugee Assistance Act of 1962* [22 U.S.C. 2601(c)].

Nonproliferation, Anti-Terrorism, Demining, and Related Programs

- Appropriates \$487,000,000 for expenses to carry out NADR pursuant to Chapter 8, Part II, FAA, for anti-terrorism assistance; Chapter 9, Part II, FAA, Section 504, FREEDOM Support Act, Section 23, AECA, and the FAA for demining activities, the clearance of unexploded ordnance, the destruction of small arms, and related activities, notwithstanding any other provision of law, including activities implemented through nongovernmental and international organizations; and Section 301, FAA, for a voluntary contribution to the IAEA and for a U.S. contribution to the Comprehensive Nuclear Test Ban Treaty Preparatory Commission. No funding is identified as an emergency requirement.
- Not more than \$34,000,000, to remain available until expended, may be used for the Nonproliferation and Disarmament Fund.
 - Funds may be used for countries other than the Independent States of the Former Soviet Union and international organizations when it is in the U.S. national interest.

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- Not less than \$26,000,000 shall be used for the Biosecurity Engagement Program.
 - Funds for IAEA may only be available if the Secretary State determines and reports to Congress that Israel is not being denied its right to participate in IAEA activities.
 - Of the funds used for the demining program, not more than \$700,000, in addition to funds otherwise available for such purposes, may be used for administration expenses related to the demining program.
 - Any FY 2008 NADR funds used for “Anti-Terrorism Assistance” and “Export Control and Border Security” shall remain available until 30 September 2009.

Title VI, General Provisions

Unobligated Balances Report (Section 604)

- Any department or agency to which any funds appropriated or made available by this act shall provide to the congressional appropriations committees a quarterly accounting of cumulative balances by program, project, and activity of the funds received this FY, or any other FY that remain unobligated and unexpended.

Limitation on Representational Allowances (Section 605)

- Of the FMFP funding appropriated for general costs of administering military assistance and sales by this Act, not more than \$4,000 shall be used for entertainment allowances and not more than \$130,000 shall be used for representational allowances.
- Of the IMET funding appropriated by this Act, not more than \$55,000 shall be used for entertainment allowances.

Prohibition on Taxation of U.S. Assistance (Section 606)

- None of the funds appropriated by this Act may be made available to provide assistance to a foreign country under a new bilateral agreement governing the terms and conditions under which such assistance is to be provided unless such agreement includes a provision stating that U.S. assistance shall be exempt from taxation, or reimbursed, by the foreign government. The Secretary of State shall expeditiously seek to negotiate amendments to existing bilateral agreements, as necessary, to conform to this requirement.
- An amount equivalent to 200 percent of the total taxes assessed during FY 2008 by a foreign government or entity against commodities financed under U.S. assistance programs for which funds are appropriated by this Act, either directly or through grantees, contractors, and subcontractors, as of the date of enactment of this Act, shall be withheld from obligation from funds appropriated for assistance for FY 2009 and allocated for the central government of that country and for the West Bank and Gaza Program to the extent that the Secretary of State certifies and reports in writing to the congressional committees on appropriations that such taxes have not been reimbursed to the U.S. government.
- Foreign taxes of a “de minimis” nature [so insignificant or minimal that a court may overlook it in deciding an issue or case] are not subject to these reimbursement provisions.
- Funds withheld from obligation for each country or entity shall be reprogrammed for assistance to countries which do not assess taxes on U.S. assistance or which have an effective arrangement that is providing substantial reimbursement of such taxes.

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- The provisions of this section shall not apply to any country or entity the Secretary of State determines does not assess taxes on U.S. assistance or has an effective arrangement that is providing substantial reimbursement of such taxes, or U.S. foreign policy interests outweigh the policy of this section.
 - The Secretary of State shall issue rules, regulations, or policy guidance, as appropriate, to implement the prohibition against the taxation of U.S. assistance.
 - DSCA Policy Memo 04-32, 21 August 2004, Subject: *Prohibition on Taxation of U.S. Assistance*, was published as SAMM E-change 19 to DoD 5105.38-M, the SAMM providing a mandatory prohibition note for FMS case Letters of Offer and Acceptance (LOAs), Amendments and Modifications financed with any type of U.S. assistance funding. This same memo also provided a sample contract clause to be used for direct commercial sales (DCS) contracts that are financed with U.S. assistance.
 - The terms “taxes” and “taxation” refer to value added taxes and customs duties imposed on commodities financed with U.S. assistance for programs for which funds are appropriated by this Act.

Prohibition Against Direct Funding for Certain Countries (Section 607)

- None of the funds appropriated or otherwise made available by this Act shall be obligated or expended to finance directly any assistance or reparations to Cuba, North Korea, Iran, or Syria. This shall include direct loans, credits, insurance, and guarantees of the Export-Import Bank or its agents.
- Libya is no longer included in this prohibition.

Military Coups (Section 608)

- None of the funds appropriated or otherwise made available by this Act shall be obligated or expended to finance directly any assistance to the government of any country whose duly elected head of government is deposed by decree or military coup.
 - *Implementing Recommendations of the 9/11 Commission Act of 2007*, Section 2042(d) and (g), P.L.110-53, 3 August 2007, amends Section 1(b), P.L.107-57, 27 October 2001, authorizing the presidential waiver for **Pakistan** to receive direct assistance through FY 2008.
- Assistance may be resumed to such government if the President determines and certifies to the congressional committees on appropriations that subsequent to the termination of assistance a democratically elected government has taken office.
- The provisions of this Section shall not apply to assistance to promote democratic elections or public participation in democratic processes.
- Any funding made available pursuant to the provisos of this section shall be subject to the regular notification procedures of the congressional committees on appropriations.

Commercial Leasing of Defense Articles (Section 610)

- As with the last several years, notwithstanding any other provision of law, and subject to the regular notification procedures of the congressional committees on appropriations, FY 2006 FMFP may be used to provide financing to Israel, Egypt, NATO, and major non-NATO allies for the procurement by leasing, including leasing with an option to purchase, of defense articles from U.S. commercial suppliers. This is not to include

MDE, other than helicopters and other types of aircraft having possible civilian application, if the President determines that there is compelling foreign policy or national security reasons for those defense articles being provided by commercial lease rather than FMS.

Availability of Funds (Section 611)

- No funding appropriated in this Act shall remain available for obligation after this FY unless expressly so provided in this Act.
- However, FY 2008 funds appropriated for the purposes, inter alia, Chapters 4, 5, 6, 8, and 9, Part II, FAA, Section 23, AECA, and the SEED Act shall remain available for an additional four years from the date of which the availability of such funds would otherwise have expired, if such funds are initially obligated before the expiration of their respective periods of availability.
 - This is the first year that **IMET funding** (Chapter 5, Part II, of the FAA) has been added to this authority.
- Notwithstanding any other provision of this Act, any funds made available for the purposes of the ESF which are allocated or obligated for cash disbursements in order to address balance of payments or economic policy reform objectives, shall remain available until expended.

Limitation on Assistance to Countries in Default (Section 612)

- No part of any appropriation in this Act shall be used to furnish assistance to a government which is in default during a period in excess of one calendar year in payment to the U.S. of principal or interest on any loan made to that pursuant to a program for which funds are appropriated under this Act unless the President determines, following consultations with the congressional appropriations committees, that assistance to such country is in the national interest of the U.S.
- Also referred to as the **Brooke-Alexander Amendment**.

Reprogramming Notification Requirements (Section 615)

- For the purposes of providing the executive branch with the necessary administrative flexibility, none of the funds made available under this Act for, inter alia, INCLE, ACI, SEED Act, FREEDOM Support Act, ESF, PKO, NADR, FMFP, and IMET shall be available for obligation for activities, programs, projects, type of material assistance, countries, or other operations not justified or in excess of the amount justified to the congressional appropriations committees for obligation under any of these specific headings unless the same committees are previously notified fifteen days in advance.
- The President shall not enter into any commitment of FMFP funds for the provision of MDE, other than conventional ammunition, or other major defense items defined to be aircraft, ships, missiles, or combat vehicles, not previously justified to Congress, or twenty percent in excess of the quantities justified to Congress unless the congressional committees on appropriations are notified fifteen days in advance of such commitment.
- These advance notification periods can be waived in the case substantial risk to human health or welfare. In this situation, the congressional notification shall be provided as early as practicable but in no event later than three days after taking the emergency action.

Allocations (Section 619)

- Funds provided in this Act for, inter alia, ESF, SEED Act, FREEDOM Support Act, INCLE, ACI, NADR, FMFP, and PKO shall be made available for programs and countries pursuant to the explanatory statement tables regarding the consolidated appropriations amendment of the House of Representatives to the amendment of the Senate to H.R. 2764. Printed in the House section of the Congressional Record on or about 17 December 2007 by the HAC chairman. This referenced statement for Division J of CAA, FY 2008 regarding S/FOAA for FY 2008 can be viewed at <http://www.rules.house.gov/110/text/omni/jes/jesdivj.pdf>.
- Any proposed increases or decreases to the amounts in the explanatory tables shall be subject to the regular notifications procedures of the congressional appropriations committees and Section 634A, FAA.

Special Notification Requirements (Section 620)

- None of the funds appropriated by Titles II through IV of this Act shall be obligated or expended for **Serbia, Sudan, Zimbabwe, Pakistan, Cuba, Iran, Haiti, Libya, Ethiopia, Mexico, Nepal, or Cambodia**, except as provided through the regular notifications procedures of the congressional committees on appropriations.

Afghanistan (Section 623)

- Of the funds appropriated by Titles III and IV of this Act, not less than \$1,057,050,000 should be made available for assistance for **Afghanistan**.
 - Not less than \$3,000,000 of the funds available pursuant to this section should be made available for reforestation activities. This funding should be matched to the maximum extent possible with contributions from American and Afghan businesses.
 - Not less than \$75,000,000 shall be used to support programs that directly address the needs of Afghan women and girls including for the Afghan Independent Human Rights Commission, the Afghan Ministry of Women's Affairs, and for women-led nonprofit organizations in Afghanistan.
 - \$20,000,000 should be made available through U.S. universities to develop agriculture extension services for Afghan farmers.
 - \$2,000,000 should be made available for a U.S. contribution to the NATO/International Security Assistance Force Post-Operations Humanitarian Relief Fund.
 - Not less than \$10,000,000 should be made available for continued support of the USAID Afghan Civilian Assistance Program.

Notification of Excess Defense Equipment (Section 624)

- Prior to providing EDA in accordance with Section 516(a), FAA, the DoD shall notify the congressional committees on appropriations to the same extent and under the same conditions as are other committees pursuant to Section 516(f), FAA.
- Before issuing an LOA to sell EDA under the AECA, DoD shall notify the congressional committees on appropriations in accordance with the regular notification procedures of such committees if the defense articles are SME or valued (in terms of original acquisition cost) at \$7,000,000 or more, or if the notification is required elsewhere in this Act for the

use of appropriated funds for specific countries that would receive such EDA. The notification is to include the original acquisition cost of such defense articles.

Prohibition on Bilateral Assistance to Terrorist Countries (Section 626)

- Funds appropriated for bilateral assistance under any heading in this Act and funds appropriated under any such heading in laws previously enacted shall not be made available to any country which the President determines grants sanctuary from prosecution to any individual or group which has committed an act of international terrorism or otherwise supports international terrorism.
- This prohibition may be waived by the President if determined that national security or humanitarian reasons justify such a waiver. The waiver shall be published in the *Federal Register*. At least fifteen days before the waiver takes effect, the President shall notify the congressional committees on appropriations of the waiver to include the justification.

Financial Market Assistance (Section 630)

- Of the funds appropriated by this Act under, inter alia, ESF, FREEDOM Support Act, NADR, and SEED Act, not less than \$40,000,000 should be made available for building capital markets and financial systems in countries eligible to receive U.S. assistance.

Comprehensive Expenditures Report (Section 633)

- Not later than 180 days after enactment, the Secretary of State shall submit a report to the congressional appropriations committees detailing the total amount of U.S. government expenditures in FY 2005 and FY 2006, by federal agency, for programs and activities in each foreign country, identifying the line item as presented in the President's budget appendix and the purpose for which the funds were provided. If required, information can be submitted in classified form.

Special Authorities (Section 634)

- Funds appropriated by Titles II through V of this Act for **Afghanistan** may be made available notwithstanding Section 612 of this Act (the Brooke-Alexander Amendment) and Section 660, FAA (the prohibition of police training)
- Funds appropriated by Titles II and III of this Act that are made available for **Iraq, Lebanon, Montenegro, Pakistan**, and for victims of war, displaced children, and displaced **Burmese**, and to assist victims of trafficking in persons and, subject to the regular notifications procedures of the congressional appropriations committees, to combat such trafficking, may be available notwithstanding any other provision of law.
- Subject to Sections 116 and 502B, FAA, (consistent and gross human rights violations prohibitions) and Section 620A, FAA, (prohibition of assistance to governments supporting international terrorism); funds appropriated by this Act to carry out Sections 103 through 106 and Part II, Chapter 4, FAA, may be used, notwithstanding any other provision of law, for the purpose of supporting tropical forestry and biodiversity conservation activities and energy programs aimed at reducing greenhouse gas emissions.
- In providing assistance with funds appropriated by this Act under Section 660(b)(6), FAA, (**reconstituting a civilian police authority**), support for a nation emerging from instability may be deemed to mean support for regional, district, municipal, or other sub-national entity emerging instability, as well as a nation emerging from instability.

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- Section 1365(c) of the *National Defense Authorization Act for Fiscal Year 1993*, as amended, P.L.102-484, 6 October 1992, is further amended advancing the moratorium on the transfer of **anti-personnel landmines** by six additional years through now 23 October 2014.
 - P.L.102-484 originally had a one year transfer moratorium ranging 6 October 1992 to 5 October 1993.
 - Section 1423, P.L.103-160, extended the moratorium by three more years to 5 October 1995.
 - Section 1401, P.L.104-164, exempted the command-detonated claymore mine, M18A1, from this moratorium.
 - Section 553, P.L.106-113, extended the moratorium to 23 October 2003.
 - Section 548, P.L. 107-115, extended the moratorium to the soon to expire 23 October 2008.

Requests for Documents (Section 641)

- No funds appropriated or made available by Titles II through V of this Act shall be available to a nongovernmental organization which fails to provide upon timely request any document, file, or record necessary to the auditing requirements of the USAID.

Prohibition on Assistance to Foreign Governments that Export Lethal Military Equipment to Countries Supporting International Terrorism (Section 642)

- None of the funds appropriated or otherwise made available by Titles II through V of this act may be available to any foreign government which provides lethal military equipment to a country the government of which the Secretary of State has determined is a terrorist government for the purposes of Section 6(j), of the EAA of 1979.
- This prohibition shall terminate twelve months after that government ceases to provide such military equipment. This section applies with respect to lethal equipment provided under a contract entered into after 1 October 1997.
- The prohibition may be waived if the President determines that such assistance is important to the U.S. national interest. When exercised, the President shall submit to the appropriate congressional committees a report with respect to the furnishing of such assistance detailing the assistance to be provided, including the estimated dollar amount of the assistance, and an explanation of how the assistance furthers U.S. national interests.

Withholding of Assistance for Parking Fines and Real Property Taxes Owed by Foreign Countries (Section 643)

- Of the funds appropriated by Titles II through V of this Act and made available for assistance for a country, an amount of 110 percent of the total amount of unpaid fully adjudicated parking fines and penalties and unpaid property taxes owed by the central government of such country shall be withheld from obligation for assistance until the Secretary of State submits a certification to the congressional appropriations committees stating that such parking fines and penalties and unpaid property taxes are fully paid.
 - The withheld funds may be made available for other programs or activities funded by this act, after consultation with and subject to the regular notification procedures of the congressional appropriations committees.
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- The Secretary of State may waive the withholding requirements for parking fines no sooner than sixty days from the date of the enactment of this Act if determined to be in the national interests of the U.S. The Secretary also may waive the withholding requirements for unpaid property taxes if determined to be in the national interest of the U.S.
 - Not later than six months of these waivers, the Secretary, after consultations with New York City, New York, shall submit a report to the congressional appropriations committees describing a strategy, including a timetable and steps currently taken, to collect the parking fines and penalties and unpaid property taxes and interest owed by the affected country.
 - Parking fines and penalties are defined to those owed to the District of Columbia or New York, New York and incurred during 1 April 1997 through 30 September 2007.
 - Unpaid property taxes are defined to those plus interest determined owed by a country on real property in the District of Columbia and New York, New York in a court order or judgment entered against the country by a court of the U.S., any State, or subdivision thereof.

War Crimes Tribunals Drawdown (Section 645)

- As in prior years, authorizes the drawdown of commodities and services of up to \$30,000,000 pursuant to Section 552(c), FAA, for the **U.N. War Crimes Tribunal** with regard to the former Yugoslavia or such other tribunals or commissions as the U.N. Security Council may establish or authorize to deal with such violations.
- Any funds made available for such tribunals other than **Yugoslavia, Rwanda**, or the **Special Court for Sierra Leone** shall be made available subject to the regular notification procedures of the congressional appropriations committees.

Landmines and Cluster Munitions (Section 646)

- As in prior years, authorizes **demining equipment** made available to USAID, the DoS and used in support of the clearance of landmines and unexploded ordnance for humanitarian purposes to be disposed of on a grant basis in foreign countries, subject to such terms and conditions as the President may prescribe.
- However, a new restriction relating to the transfer of **cluster munitions** has been provided to apparently begin with the FY 2008 military program. Section 646(b) of this Act prohibits military assistance, export licenses (DCS), or the sale or transfer of technology for cluster munitions except when the following conditions are met.
 - The sub-munitions of the cluster munitions have a 99 percent or higher tested rate.
 - The applicable agreement for assistance, transfer, or sale of the munitions or its technology specifies the munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present.

Prohibition of Payment of Certain Expenses (Section 648)

- As in prior years, none of the funding appropriated or otherwise made available by Titles III or IV of this Act under the headings, inter alia, IMET and FMFP informational program activities, or ESF, may be obligated or expended to pay for:
 - Alcoholic beverages

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- Entertainment expenses for activities that are substantially of a recreational character, including but not limited to entrance fees at sporting events, theatrical and musical productions, and amusement parks.

Colombia (Section 649)

- Of the funds appropriated in Titles III and IV of this Act, not more than \$545,608,000 shall be made available for assistance for **Colombia**.
- Funds appropriated by this Act that are available for assistance for the Colombian Armed Forces may be made available as follows:
 - Up to 70 percent of such funds may be obligated prior to the below described certification by the Secretary of State.
 - Up to 15 percent of such funds may be obligated only after the Secretary of State consults with and later certifies and reports to the congressional appropriations committees that:
 - The Commander General of the Colombian Armed Forces is suspending or placing on administrative duty, if requested by the prosecutor, those members of the armed forces, of whatever rank who, according to the Minister of Defense, the Attorney General, or the Procuraduria General de la Nacion, have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations or successor armed groups.
 - The Colombian government is investigating and prosecuting, in the civilian justice system, those members of the Colombian Armed Forces, of whatever rank, who have been credibly alleged to have committed gross violations of human rights, including extra-judicial killings, or to have aided or abetted paramilitary organizations or successor armed groups.
 - The Colombian Armed Forces are cooperating with civilian prosecutors and judicial authorities in such cases to include providing requested information, such as the identity of persons suspended from the armed forces and the nature and cause of the suspension, and access to witnesses, relevant military documents, and other requested information.
 - The Colombian Armed Forces have taken all necessary steps to sever links, including denying access to military intelligence, vehicles, and other equipment or supplies, and ceasing other forms of active or tacit cooperation at all levels, with paramilitary organizations or successor armed groups, especially in regions where such organizations have a significant presence.
 - The Colombian Armed Forces are dismantling paramilitary leadership and financial networks by arresting and prosecuting under civilian criminal law individuals who have provided financial, planning, or logistical support, or have otherwise aided or abetted paramilitary organizations or successor armed groups; by identifying and seizing land and other assets illegally acquired by such organizations or their associates and returning such land or assets to their rightful occupants or owners; by revoking reduced sentences for demobilized paramilitaries who engage in new activity; and by arresting and prosecuting under civilian criminal law, and when requested, promptly extraditing to the U.S. members of successor armed groups.

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- The Colombian government is ensuring that the Colombian Armed Forces are not violating the land and property rights of Colombia's indigenous communities and Afro-Colombian communities, and that the Colombian Armed Forces are implementing procedures to distinguish between civilians, including displaced persons, and combatants in their operations. .
 - The balance of the funding may be obligated after 31 July 2008 if the Secretary of State, prior to such date, consults with and submits a written certification to the congressional appropriations committees that the Colombian Armed Forces are continuing to meet the conditions contained in the above earlier report. This second report is to also include that the Colombian Armed Forces are conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary or successor armed groups and guerilla organizations.
 - The above two certification reports by the Secretary shall also include a report that contains, with respect to each report requirement, a detailed description of the specified actions taken by both the Colombian government and the Colombian Armed Forces which support each requirement of the certifications, and the cases or issues brought to the attention of the Secretary, including through the annual *State Department Country Reports on Human Rights Practices*, for which the actions taken by the Colombian government or Armed Forces have been determined by the Secretary to be inadequate.
 - The requirement to withhold funds from obligation shall not apply to ACI funds for continued support for the critical flight safety program or for any alternative development programs in Colombia administrated by the Bureau of International Narcotics and Law Enforcement Affairs.
 - Not later than sixty days after the enactment of this Act and every ninety days thereafter until 30 September 2008, the Secretary of State shall consult with Colombian and internationally recognized human rights organizations regarding progress in meeting the conditions outlined in the reports.
 - Up to \$11,442,000 of FY 2008 ESF funding may be used for assistance for the disarmament demobilization, and reintegration of former members of foreign terrorist organizations (FTOs) in Colombia if the Secretary of State consults with and also certifies in the above already described certification reports to the congressional appropriations committees prior to the initial obligation of funding for such assistance for the FY involved.
 - This FTO assistance certification is further described to include:
 - Assistance for the FY will be provided only for individuals who have the following:
 - Verifiably renounced and terminated any affiliation or involvement with FTOs or other illegal armed groups.
 - Are meeting all the requirements of the Colombia demobilization program, including having disclosed their involvement in past crimes and their knowledge of the FTOs structure, financing sources, illegal assets, and the location of kidnapping victims and bodies of the disappeared.
 - Are not involved in acts of intimidation or violence
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- The government of Colombia is providing full cooperation to the U.S. to extradite the leaders and members of the FTOs who have been indicted in the U.S. for murder, kidnapping, narcotics trafficking, or other violations of U.S. law, and is extraditing to the U.S. those commanders, leaders, and members indicted in the U.S. who have breached the terms of the Colombian demobilization program, including by failing to fully confess their crimes, failing to disclose their illegal assets, or committing new crimes since the approval of the Justice and Peace Law.
 - The government of Colombia is not knowingly taking any steps to legalize the titles of land or other assets illegally obtained and held by FTOs, their associates, or successors, has established effective procedures to identify such land and other assets, and is seizing and returning such land and other assets to their rightful occupants or owners.
 - The government of Colombia is implementing a concrete and workable framework for dismantling and the organizational structures of FTOs.
 - Funds shall not be made available as cash payments to individuals and are available only for activities under the following categories: verification, reintegration to include training and education, vetting, recovery of assets for reparations for victims, and investigations and prosecutions.
 - The Secretary of State shall not issue a visa to any alien who is determined, based on credible evidence:
 - Has willfully provided any support to the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), the United Self-Defense Forces of Colombia (AUC), or successor armed groups, including taking actions or failing to take actions which allow, facilitate, or otherwise foster the activities of such groups.
 - Has committed, ordered, incited, assisted, or otherwise participated in the commission of a gross violation of human rights, including extra-judicial killings in Colombia.
 - This visa prohibition may be waived by the State of Secretary on a case-by-case basis if the Secretary certifies to the congressional appropriations committees that the issuance of a visa to the alien is necessary to support the peace process in Colombia or for urgent humanitarian reasons.
 - “Aided or abetted” is defined to mean providing any support to paramilitary or successor armed groups, including taking actions which allow, facilitate, or otherwise foster the activities of such groups.
 - “Paramilitary groups” is defined to mean illegal self-defense groups and illegal security cooperatives including those groups and cooperatives that have formerly demobilized but continue illegal operations, as well as parts thereof.
 - “Foreign terrorist organization” is defined to mean an organization designated as a terrorist organization by Section 219 of the *Immigration and National Act*.
 - This year’s report and certification requirements are similar to prior years but significantly expanded.
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Limitation on Assistance to the Palestinian Authority (650)

- None of the funds appropriated by this Act to carry-out provisions of Chapter 4, Part II, FAA, may be obligated or expended with respect to providing funds to the **Palestinian Authority**. This includes military assistance pursuant to Sections 503 through 517, FAA.
- This prohibition shall not apply if the President certifies in writing to Congress that waiving is important to the U.S. national security interests. Any such waiver shall be effective for no more than six months at a time and shall not apply beyond twelve months after enactment of this Act.
- The waiver shall include a report to the congressional appropriations committees detailing justification for the waiver, the purposes for which the funds will be spent, and the accounting procedures in place to ensure that the funds are properly disbursed. The report shall also include detail of steps the Palestinian Authority has taken to arrest terrorists, confiscate weapons, and dismantle the terrorist infrastructure.

Limitation on Assistance to Security Forces (Section 651)

- This Section is often referred to as the **Leahy Amendment** which has been included for several years in the annual FOAA. A major difference is that the following amendment has, instead, been codified into the FAA.

Section 620J. Limitation on Assistance to Security Forces

- **IN GENERAL – No assistance shall be furnished under this Act or the AECA** [emphasis added by this author] to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights.
- **EXCEPTION** – The probation in subsection (a) shall not apply if the Secretary determines and reports to the Committee on Foreign Relations of the Senate, the Committee on Foreign Affairs of the House, and the Committees on Appropriations that the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice.
- **DUTY TO INFORM** – In the event that funds are withheld from any unit pursuant to this section, the Secretary of State shall promptly inform the foreign government of the basis for such action and shall, to the maximum extent practicable, assist the foreign government in taking effective measures to bring the responsible members of the security forces to justice.
- This amendment was entered into H.R. 2764 by the SAC, of which Senator Patrick Leahy (D-VT) is chair of the subcommittee for S/FOAA.
- The major differences from past legislation include expanding “None of the funds made available by this Act [FOAA] . . .” to now state “No assistance . . . under [the FAA] or the AECA . . .” thus specifically including all military assistance — whether country or U.S.-funded, or via FMS or DCS or via third-country transfer, a lease, drawdown, or grant EDA.

Foreign Military Training Report (Section 652)

- This annual report from the Secretary of State and Secretary of Defense shall be submitted in accordance with Section 656, FAA, which requires that report not later than 31 January each year.
- Unless a country (or countries) is requested for inclusion by one of the appropriations committees in writing at least ninety days in advance, the report is not required to include training for NATO countries, Japan, Australia, or New Zealand.

Authorization Requirement (Section 653)

- Provides authorization language to obligate and expend funds appropriated by this Act except for funds under the headings of “Trade and Development Agency” and “Overseas Private Investment Corporation.”

Libya (Section 654)

- None of the funds appropriated or otherwise made available by this Act shall be obligated or expended to finance directly any assistance for **Libya**.
- This prohibition will no longer apply if the Secretary of State certifies to the congressional appropriations committees that the government of Libya has made the final settlement payment to the Pan Am 103 victims’ families, paid to the LaBelle Disco bombing victims the agreed upon settlement amounts, and is engaging in good faith settlement discussions regarding other relevant terrorism case.
- Not later than 180 days after enactment, the Secretary shall submit a report to the congressional appropriations committees describing actions taken by the DoS to facilitate a resolution of these case, and U.S. commercial activities in Libya’s energy sector.

Palestinian Statehood (Section 655)

- None of the funds appropriated by Titles II through V of this Act may be provided to support a Palestinian state unless the Secretary of State determines and certifies to the appropriate congressional committees that:
 - The governing entity of a new Palestinian state:
 - Has demonstrated a firm commitment to peaceful coexistence with Israel.
 - Is taking appropriate measures to counter terrorism and terrorism financing in the West Bank and Gaza, including the dismantling of terrorist infrastructures and is cooperating with appropriate Israeli and other appropriate security organizations.
 - The Palestinian Authority or governing body of a new Palestinian state is working with other countries in the region to vigorously pursue efforts to establish a just, lasting, and comprehensive peace in the Middle East that will enable Israel and an independent Palestinian state to exist within the context of full and normal relationships to include:
 - Termination of all claims or states of belligerency.

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- Respect for and acknowledgement of the sovereignty, territorial integrity, and political independence of every state in the area through measures including the establishment of demilitarized zones.
 - Their right to live in peace within secure and recognized boundaries free from threats or acts of force.
 - Freedom of navigation through international waterways in the area.
 - A framework for achieving a just settlement of the refugee problem.
 - This can be waived by the President if determined to be vital to the national security interests of the U.S.
 - These restrictions shall not apply to assistance intended to help reform the Palestinian Authority and affiliated institutions or the governing entity in order to help meet the above requirements consistent with provisions in Section 650 of this Act, "Limitation on Assistance to the Palestinian Authority."

West Bank and Gaza Assistance (Section 657)

- For the FY 2008, thirty days before the initial obligation of funds for the bilateral **West Bank and Gaza Program**, the Secretary of State shall certify to the congressional appropriations committees that procedures have been established to ensure the U.S. Comptroller General will have access to the appropriate U.S. financial information in order to review the uses of U.S. assistance for the Program funded under ESF.
 - Prior to the obligation of ESF funds, the Secretary of State shall take all appropriate steps to ensure that such assistance is not provided to or through any individual, private or government entity, or educational institution that the Secretary knows or has reason to believe advocates, plans, sponsors, engages in, or has engaged in, terrorist activity, nor, with respect to private entities or educational institutions, those that have as a principal officer of the entity's governing board or governing board of trustees any individual that has been determined to be a member of a designated foreign terrorist organization. The Secretary shall as appropriate establish vetting procedures specifying the steps to be taken in carrying out this subsection and shall terminate assistance to any individual, entity, or educational institution which has been determined to be involved in or advocating terrorist activity.
 - Specifically, none of the funds appropriated by Titles II through V of this Act for assistance under the West Bank and Gaza Program may be made available for the purpose of recognizing or otherwise honoring individuals who commit, or have committed acts of terrorism.
 - Also, notwithstanding any other provision of law, none of the funds made available by this or prior appropriations acts, including funds made available by transfer, may be made available for obligation for security assistance for the West Bank and Gaza until the Secretary reports to the congressional appropriations committees on the benchmarks that have been established for security assistance for the West Bank and Gaza and reports on the extent of Palestinian compliance with such benchmarks.
 - USAID shall ensure that Federal or non-Federal audits of all contractors and grantees, and significant subcontractors and sub-grantees, under the West Bank and Gaza Program, are conducted at least on an annual basis to ensure, among other things, compliance with this section. Up to \$500,000 appropriated by this Act may be used for these audits.
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- After the certification required by this Act, the Comptroller General of the U.S. shall conduct an audit and an investigation of the treatment, handling, and uses of all FY 2008 ESF funds for the bilateral West Bank and Gaza Program to address the following:
 - The extent to which the Program complies with the requirements of the certifications required by this section.
 - An examination of all programs, projects, and activities carried out under such Program, including obligations and expenditures.

War Criminals (Section 658)

- None of the funds appropriated or otherwise made available by Titles II through V of this Act may be made available for assistance, and the Secretary of the Treasury shall instruct the U.S. executive directors to the international financial institutions to vote against any new project involving the extension by such institutions of any financial or technical assistance, to any country, entity, or municipality whose competent authorities have failed, as determined by the Secretary of State, to take necessary and significant steps to implement its international legal obligations to apprehend and transfer to the **International Criminal Tribunal for the former Yugoslavia** all persons in their territory who have been indicted by the Tribunal and to otherwise cooperate with the Tribunal.
- This section shall not apply to humanitarian assistance or assistance for democratization.
- This section shall apply unless the Secretary of State determines and reports to the appropriate congressional committees that the competent authorities of such country, entity, or municipality are cooperating with the Tribunal including access for investigators to archives and witnesses, the provision of documents, and the surrender and transfer of indictees or assistance in their apprehension, and are acting consistently with the *Dayton Accords of 10-16 November 1995*.
- Not less than ten days before any vote in an international financial institution regarding the extension of any new project involving financial or technical assistance or grants to any above mentioned country or entity, the Secretary of the Treasury, in consultation with the Secretary of State, shall provide the congressional appropriations committees a written justification for the proposed assistance to include an explanation of the U.S. position regarding any such vote, as well as a description of the location of the proposed assistance.
- The Secretaries of the Treasury and State and the Administrator of USAID shall consult with representatives of human rights organizations and all government agencies with relevant information to help prevent indicted war criminals from benefiting from any financial or technical assistance or grants to be provided.
- The Secretary of State may waive this application upon providing a written determination to the congressional appropriations committees that such assistance directly supports the implementation of the Dayton Accords.
- Country for this section means **Bosnia and Herzegovina, Croatia, and Serbia**. Entity refers to the **Federation of Bosnia and Herzegovina, Kosovo, Montenegro and the Republika Srpska**. Municipality means a city, town or other subdivision within the above defined country or entity.

Community-Based Police Assistance (Section 661)

- FY 2008 ESF funding may be used to enhance the effective and accountability of civilian police authority through training and technical assistance in human rights, the rule of law, strategic planning, and through assistance to foster civilian police roles that support democratic governance including assistance for programs to prevent conflict, respond to disasters, address gender-based violence, and foster improved police relations with the communities they serve. This assistance shall be subject to prior consultation with and the regular notification procedures of the congressional appropriations committees.

Reconciliation Programs (Section 665)

- \$16,000,000 of the FY 2008 ESF funding shall be made available to support reconciliation programs and activities which bring together individuals of different ethnic, religious, and political backgrounds from areas of civil conflict and war.
- An additional \$9,000,000 shall be made available for a similar program only for the Middle East.

Sudan (Section 666)

- None of the funds appropriated by this Act may be made available for the government of **Sudan**.
- These prohibitions shall not apply if the Secretary of State determines and certifies to the congressional appropriations committees that the government of Sudan:
 - Honors its pledges to cease attacks upon civilians and disarms and demobilizes the Janjaweed and other government-supported militias,
 - And all government-supported militia groups are honoring their commitments made in all previous cease-fire agreements,
 - Is allowing unimpeded access to Darfur to humanitarian aid organizations, the human rights investigation and humanitarian teams of the U.N., including protection officers and an international monitoring team that is base in Darfur and has the support of the U.S.
- Likewise, these prohibitions shall not apply to humanitarian assistance, or assistance for the **Darfur region**, Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, and Abyei, or assistance to support implementation of the *Comprehensive Peace Agreement* and the *Darfur Peace Agreement* or any other internationally recognized viable peace agreement in Sudan.
- Notwithstanding any other law, assistance in this Act may be made available to the **government of Southern Sudan** to include non-lethal military assistance, IMET, and *United States Munitions List* defense services if the Secretary of State determines that such assistance is in the U.S. national interest and notifies the congressional foreign affairs and appropriations committees of the determination not less than fifteen days before providing such assistance.
- Notwithstanding any other provision of law, of the funds appropriated by this Act for the Sudan, up to \$5,000,000 shall be made available for administrative and other expenses of the USAID in Chad.

Transparency and Accountability (Section 668)

- Section 668(e) directs that no funding appropriated by this Act may be made available to any central government of a country that fails to make its national budget public on an annual basis, to include income and expenditures.
- The Secretary of State may waive this prohibition with a report to the congressional appropriations committee if determined to be in the U.S. national interest.
 - The Deputy Secretary of State provided this waiver report on 22 January 2008.

Excess Defense Articles for Central and South European Countries and Certain Other Countries (Section 669)

- Notwithstanding Section 516(e), FAA, DoD funds may be expended during FY 2008 for crating, packing, handling, and **transportation of grant EDA** to Albania, Afghanistan, Bulgaria, Croatia, Estonia, Former Yugoslavian Republic of Macedonia, Georgia, India, Iraq, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Pakistan, Romania, Slovakia, Tajikistan, Turkmenistan, and Ukraine.
- Uzbekistan has been removed from this authority.

Gender-Based Violence (Section 670)

- Programs funded under Titles III and IV of this Act that provide training for foreign police, judicial, and military officials, shall include, where appropriate, programs, and activities that address gender-based violence. This would include, inter alia, ESF, SEED Act, FREEDOM Support Act, INCLE, ACI, NADR, IMET, FMFP, and PKO funded training.

Limitation on Economic Support Fund Assistance for Certain Foreign Governments that are Parties to the International Criminal Court (Section 671)

- None of the FY 2008 ESF funds may be provided for assistance to the government of a country that is a party to the International Criminal Court and has not entered into an agreement with the U.S. pursuant to Article 98 of the Rome Statute.
- With prior notice to Congress, the President may waive this ESF prohibition with respect to NATO countries and major non-NATO allies, Taiwan, or such other country determined and reported to be waived for U.S. national interests. This Section refers to Australia, Egypt, Israel, Japan, Jordan, Argentina, the Republic of Korea, and New Zealand as major non-NATO allies.
- This prohibition shall not apply to countries otherwise eligible for assistance under the *Millennium Challenge Act of 2003*.

Western Hemisphere (Section 672)

- Haiti:
 - Eligible to purchase defense articles and services under the AECA for the Coast Guard.
 - Of the funds appropriated by Titles III and IV of this Act, not less than \$201,584,000 shall be available for Haiti.
 - None of FY 2008 INCLE funding may be used to transfer excess weapons, ammunition or other lethal property of an agency of the U.S. government to the government of Haiti

for use by the Haitian National Police until the Secretary of State certifies to the congressional committees on appropriations that:

- Any members of the Haitian National Police who have been credibly alleged to have committed serious crimes, including drug trafficking and human rights violations, have been suspended.
- The Haitian government is cooperating in a reform and restructuring plan for the Haitian National Police.
- The reform of the judicial system as called for in the U.N. Security Council Resolution 1608 adopted on 22 June 2005.
- Guatemala:
 - Not less than \$4,000,000 in FY 2008 ESF funding available for Guatemala shall be available for a U.S. contribution to the International Commission against Impunity in Guatemala (CICIG).
 - Other than for E-IMET, FY 2008 IMET funds made available for Guatemala may be used only for the Guatemalan Air Force, Navy, and Army Corps of Engineers (COE). The IMET assistance for the Army COE shall only be available for training to improve disaster response capabilities and to participate in international peacekeeping operations. These funds may only be made available if the Secretary of State certifies that the Guatemalan Air Force, Navy and Army COE are respecting human rights and are cooperating with civilian judicial investigations and prosecutions of current and retired military who have been credibly alleged to have committed violations of human rights.
 - Not more than \$500,000 in FY 2008 FMFP funding may be made available for the Guatemalan Air Force and Navy only after the Secretary of State provides a certification similar to the one described above for IMET funding, and to also include certification of full cooperation with CICIG investigations.
- Any FY 2008 assistance funding for Guatemala and Haiti are subject to the regular notification procedures of the congressional appropriations committees.

Zimbabwe (Section 673)

- The Secretary of the Treasury shall instruct the U.S. executive director to each international financial institution to vote against any extension by the respective institution of any loans, to the government of Zimbabwe, except to meet basic human needs or to promote democracy, unless the Secretary of State determines and certifies to the congressional committees on appropriations that the rule of law has been restored in Zimbabwe, including respect for ownership and title to property, freedom of speech, and association.

Disaster Assistance and Recovery (Section 675)

- Funds made available to the Comptroller General under Title I, Chapter I, P.L.106-31, and Section 593, P.L.106-429, to monitor the provision of assistance to address the effects of hurricanes in Central America and the Caribbean, the earthquake in Colombia, and to monitor the earthquake and reconstruction efforts in El Salvador under Section 561, P.L.107-115, shall also be available to the Comptroller General to monitor any other disaster assistance and recovery effort.

Reporting Requirement (Section 678)

- The Secretary of State shall provide a quarterly written report, beginning 1 April 2008, to the congressional appropriations committees on the uses of funds made available under FMFP, IMET, and PKO. This report shall include a description of the obligation and expenditures of funds, and the specific country in receipt of, and the use or purpose of the assistance provided by such funds.

Indonesia (Section 679)

- Up to \$15,700,000 in FY 2008 FMFP funding assistance may be made available for assistance for **Indonesia**. \$13,000,000 of this funding may be made available upon enactment of this Act. However, the remaining \$2,700,000 may not be available until the Secretary of State reports to the congressional appropriations committees:
 - Of the steps taken by the Indonesian government in the prosecution and punishment, in a manner proportional to the crime, those members of the armed forces who have been credibly alleged to have committed gross violation of human rights in **Timor-Leste** and elsewhere, and cooperation by the armed forces with civilian judicial authorities and with international efforts to resolve cases of gross violations of human rights.
 - Of the steps taken by the Indonesian government in the implementation by the armed forces of reforms to increase the transparency and accountability of their operations.
 - That the government of Indonesia has written plans to effectively provide accountability for past violations of human rights by members of the armed forces, and is implementing plans to effectively allow public access to **Papua** and to pursue the criminal investigation and provide the projected timeframe for completing the investigation of the murder of Munir Said Thalid.
- Not less than \$250,000 of FY 2008 ESF funding made available for Indonesia should be for grants for capacity building of Indonesian human rights organizations, including in Papua.

Prohibition on Use of Torture (Section 681)

- No funding in this Act shall be used in any way whatsoever to support or justify the use of torture, cruel, or inhumane treatment by any official or contract employee of the U.S. government.

Report on Indonesia (Section 682)

- Not later ninety days after enactment, the Secretary of State shall submit a report to the congressional appropriations committees that describes:
 - The steps taken by the government of Indonesia to deny promotion, suspend from active service, and pursue prosecution of military officers indicted for serious crimes, and the extent to which past and present Indonesian military officials are cooperating with domestic inquiries into human rights abuses, including the forced disappearance and killing of students activists in 1998 and 1999.
 - The responses of the governments of **Indonesia** and Timor-Leste to the Final Report of the Commission for Reception, Truth, and Reconciliation in Timor-Leste and the June 2006 report of the report to the Secretary-General of the Commission of Experts

to Review the Prosecution of Serious Violations of Human Rights in Timor-Leste in 1999.

- The steps taken by the Indonesian military to divest itself of illegal businesses.

Extradition (Section 683)

- Other than funds provided under INCLE, Migration and Refugee Assistance, Emergency Migration and Refugee Assistance, and NADR; no other funds made available by this act may be used to provide assistance to the central government of a country which has notified the Secretary of State of its refusal to extradite to the U.S. any individual indicted for a criminal offense for which the maximum penalty is life imprisonment without the possibility of parole or for killing a law enforcement officer, as specified in a U.S. extradition request.
- This shall only apply to the central government of a country with which the U.S. maintains diplomatic relations and with which the U.S. has an extradition treaty and the government of that country is in violation of the terms and conditions of the treaty.
- The Secretary of State may waive this prohibition on a case-by-case basis if certified in writing to the congressional appropriations committees that the waiver is important to U.S. national interests.

Uzbekistan (Section 685)

- FY 2008 appropriated assistance may be provided to the central government of **Uzbekistan** only if the Secretary of State determines and reports to the congressional appropriations committees that the government is making substantial and continuing progress in meeting its commitments under the *Declaration on the Strategic Partnership and Cooperation Framework Between the Republic of Uzbekistan and the United States of America*, including respect for human rights, establishing a genuine multi-party system, and ensuring free and fair elections, freedom of expression, and the independence of the media and in the investigation and prosecution of individuals responsible for the 31 May 2005 deliberate killings of civilians in Andijan.
 - This FY 2008 assistance is further defined to include excess defense articles.
- If the Secretary has credible evidence that any current or former official of the government of Uzbekistan was responsible for the Andijan killings, or for other gross violations of human rights in Uzbekistan, not later than six months after enactment of this Act, any person identified by the Secretary shall be ineligible for admission to the U.S.
 - This restriction shall cease to apply if the Secretary determines and reports to the congressional appropriations committees that the government of Uzbekistan has taken concrete and measurable steps to improve respect for internationally recognized human rights, including allowing peaceful political and religious expression, releasing imprisoned human rights defenders, and implementing recommendations made by the U.N. on torture.
 - The Secretary may waive this restriction if determined that admission to the U.S. is necessary to attend the U.N. or to further U.S. law enforcement objectives.

Repression in the Russian Federation (Section 686)

- None of the funds appropriated by this Act may be made available for the government of the **Russian Federation**, after 180 days after enactment of this Act, unless the President determines and certifies in writing to the congressional appropriations committees that the government:
 - Has implemented no statute, executive order, regulation, or similar government action that would discriminate or which has its principal effect discrimination against religious groups or communities in the Russian Federation in violation of accepted international agreements on human rights and religious freedoms to which the Russian Federation is a party.
 - Is honoring its international obligations regarding freedom of expression, assembly, and press, as well as due process.
 - Is investigating and prosecuting law enforcement personnel credibly alleged to have committed human rights abuses against political leaders, activists, and journalists.
 - Has immediately released political leaders, activists, and journalists who remain in detention.
- The Secretary of State may waive the above described requirements if determined to do so is important to the U.S. national interest.

War Crimes in Africa (Section 687)

- Funds appropriated by this Act may be made available to the central government of a country in which individuals indicted by the International Criminal Tribunal for Rwanda (ICTR) and the Special Court for Sierra Leone (SCSL) are credibly alleged to be living, if the Secretary of State determines and reports to the congressional appropriations committees that such government is cooperating with the ICTR and SCSL to include the surrender and transfer of indictees in a timely manner.
 - This restriction shall not apply to PKO funding assistance or to project assistance provided by Title II of this Act.
 - The U.S. shall use its voice and vote in the U.N. Security Council to fully support efforts by the ICTR and SCSL to bring to justice individuals indicted by such tribunals in a timely manner.
- This prohibition may be waived on a country-by-country basis if the President determines it is in the U.S. national security interest to do so. Prior to such a determination waiver, the President shall submit a report to the congressional appropriations committees, classified if necessary, to include:
 - The steps being taken to obtain the cooperation of the government in surrendering the indictee in question to the court of jurisdiction.
 - A strategy, including a timeline, for bringing the indictee before such court.
 - The jurisdiction for exercising the waiver authority.

Egypt (Section 690)

- \$100,000,000 appropriated for FY 2008 ESF or FMFP for **Egypt** shall not be available for obligation until the Secretary of State certifies and reports to the congressional appropriations committees that the government of Egypt has taken concrete and measurable steps to:
 - Adopt and implement judicial reforms that protect the independence of the judiciary.
 - Review criminal procedures and train police leadership in modern policing to curb police abuses.
 - Detect and destroy the smuggling network and tunnels that lead from Egypt to Gaza.
- Not less than 45 days after enactment, the Secretary may waive the above certification and report if the Secretary determines and reports to the same committees that such waiver is in the U.S. national security interest.

Democracy, the Rule of Law, and Governance in Iran (Section 690)

- \$60,000,000 appropriated by this Act should be made available for programs to promote democracy, the rule of law, and governance in **Iran**.

United Nations Human Rights Council (Section 695)

- No funds appropriated by this Act may be made available for a U.S. contribution to the U.N. Human Rights Council. This may be waived with a Secretary of State certification to the congressional appropriations committees that the providing of such funds to support the Council is in the U.S. national interest, or the U.S. is a member of the Council.

Attendance at International Conferences (Section 696)

- None of the funds made available in this Act may be used to send or otherwise pay for the attendance of more than fifty employees of agencies or departments of the U.S. government who are stationed in the U.S., at any single international conference occurring outside the U.S., unless the Secretary of State determines that such attendance is in the national interest.
- International conference shall mean a conference attended by representatives of the U.S. government and representatives of foreign governments, international organizations, or nongovernmental organizations.

Saudi Arabia (Section 697)

- None of the funds appropriated or otherwise made available by this Act shall be obligated or expended to finance any assistance to **Saudi Arabia**.
- The President may waive this prohibition if certified to the congressional appropriations committees fifteen days prior to obligation that Saudi Arabia is cooperating with efforts to combat international terrorism and that the proposed assistance will help facilitate that effort.
- This prohibition for FY 2007 assistance to Saudi Arabia was waived by the President on 19 October 2007.

Central Asia (Section 698)

- Funds appropriated by this Act may be made available for assistance for the government of **Kazakhstan** only if the Secretary of State determines and reports to the congressional committees on appropriations that the government of Kazakhstan has made significant improvements in the protection of human rights and civil liberties during the preceding months. This to include fulfilling obligations recommended by the Organization for Security and Cooperation in Europe (OSCE) in the areas of election procedures, media freedom, freedom of religion, free assembly and minority rights, and meeting commitments it made in connection with its assumption of the Chairmanship of the OSCE in 2010.
- This requirement may be waived by the Secretary if determined and reported to the congressional committees on appropriations and foreign relations that such a waiver is in the U.S. national security interests.
- Not later than 1 October 2008, the Secretary of State shall submit a report to the congressional committees on appropriations and foreign relations describing the following:
 - The defense articles, defense services, and financial assistance provided by the U.S. to the countries of Central Asia during the twelve-month period ending thirty days prior to submission of each such report.
 - The use during such time of defense articles, defense services, and financial assistance provided by the U.S. by units of the armed forces, border guards, or any other security forces of such countries.
 - For the purposes of this report, countries of Central Asia include **Uzbekistan, Kazakhstan, Kyrgyz Republic, Tajikistan, and Turkmenistan**.

Disability Programs (Section 699)

- Not less than \$4,000,000 of FY 2008 ESF appropriations shall be made available for programs and activities administered by USAID to address the needs and protect the rights of people with disabilities in developing countries.
- \$1,000,000 of this funding should be made available to disability advocacy organizations that have expertise in working to protect the rights and increasing the independence and full participation of people with disabilities. USAID should seek to disburse at least 25 percent of the funds in the form of small grants.
- The Secretaries of State and the Treasury, and the Administrator of USAID shall seek to ensure that, where appropriate, construction projects funded by this Act are accessible to people with disabilities and in compliance with USAID Policy on Standards for Accessibility for the Disabled, or other similar accessibility standards. USAID is to submit a report describing the programs, activities, and organizations funded pursuant to this section.

Child Soldiers (Section 699C)

- None of the funds appropriated or otherwise made available for FMFP, FMS, DCS, or EDA by this Act or any other act making appropriations for FOAAs may be obligated or otherwise made available to the government of a country that is identified in the most recent *State Department Country Report on Human Rights Practices* as having governmental armed forces or government supported armed groups, including paramilitaries, militias, or civil defense forces that recruit or use **child soldiers**.

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- This assistance may be provided if the Secretary of State certifies to the congressional appropriations committees that the government of such country has implemented effective measures to demobilize children from its forces or other government supported armed groups and prohibit and prevent the future recruitment or use of child soldiers.
 - The Secretary of State may waive this prohibition to a country if the Secretary determines and reports to the congressional appropriations committees that such waiver is important to U.S. national interest.

Funding for Serbia (Section 699D)

- Funds in this Act made be made available for assistance for the central government of **Serbia** after 31 May 2008, if the President has made the determination and certification to the congressional committees on appropriations that the government of Serbia is:
 - Cooperating with the International Criminal Tribunal for the former Yugoslavia including access for investigators, the provision of documents, timely information on the location, movement, and sources of financial support of indictees, and the surrender and transfer of indictees or assistance in their apprehension including Ratko Mladic and Radovan Karadzic.
 - Taking steps that are consistent with the Dayton Accords to end Serbian financial, political, security and other support which has served to maintain separate Republika Srpska institutions.
 - Taking steps to implement policies which reflect a respect for minority rights and the rule of laws.
- This section does not apply to Kosovo, humanitarian assistance or assistance to promote democracy.
- After 31 May 2008, the Secretary of the Treasury should instruction the U.S. executive directors to the international financial institutions to support loans and assistance to the government of Serbia subject to the conditions of the above presidential determination and certification.

Philippines (Section 699E)

- Of the funds appropriated by this Act under FMFP, not to exceed \$30,000,000 may be made available for assistance for the **Philippines**.
 - \$2,000,000 of this funding may only be made available after the Secretary of State reports to the congressional appropriations committees the following:
 - The Philippine government is implementing the recommendations of the U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.
 - The Philippine government is implementing a policy of promoting military personnel who demonstrate professionalism and respect for human rights, and is investigating and prosecuting military personnel and others who have been credibly alleged to have committed extrajudicial executions or other violations of human rights.
 - The Philippine military is not engaging in acts of intimidation or violence against members of legal organizations who advocate for human rights.

Pakistan (Section 699F)

- Of the funds appropriated by this Act for FMFP, up to \$300,000,000 may be made available for assistance for **Pakistan** as follows:
 - \$250,000,000 made immediately available for counter-terrorism and law enforcement activities directed against al Qaeda and the Taliban and associated terrorist groups.
 - \$50,000,000 may be made available for the above stated purposes after the Secretary of State reports to the congressional appropriations committees that the government of Pakistan:
 - Is making concerted efforts to prevent al Qaeda and associated terrorist groups from operating in the territory of Pakistan, including by eliminating terrorist training camps or facilities, arresting members of al Qaeda and associated terrorist groups, and countering recruitment efforts.
 - Is making concerted efforts to prevent the Taliban from using the territory of Pakistan as a sanctuary from which to launch attacks within Afghanistan, including by arresting Taliban leaders, stopping cross-border incursions, and countering recruitment efforts.
 - Is implementing democratic reforms, to include:
 - Restoring the Constitution of Pakistan and ensuring freedoms of expression and assembly and other civil liberties guaranteed by the Constitution.
 - Releasing political detainees and allowing inclusive democratic elections.
 - Ending harassment and detention of journalists, human rights defenders, and government critics by security and intelligence forces.
 - Restoring an independent judiciary and ending interference in the judicial process.
- Of the funds appropriated by this Act for ESF to be made available for Pakistan assistance, up to \$5,000,000 may be used for Administrative expenses of USAID.
- None of the funds appropriated by this Act may be available for cash transfer assistance for Pakistan.

Sri Lanka (Section 699G)

- No funds appropriated by this Act under FMFP may be made available, no DCS license may be issued, no military equipment or technology shall be sold or transferred to Sri Lanka pursuant to this Act or any other act unless the Secretary of State certifies to the congressional appropriations committees the following:
 - The Sri Lankan military is suspending and the Sri Lankan government is bringing to justice members of the military who have been credibly alleged to have committed gross violations of human rights or international humanitarian law, including complicity in the recruitment of child soldiers.
 - The Sri Lankan government is providing access to humanitarian organizations and journalists throughout the country consistent with international humanitarian law.

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- The Sri Lankan government has agreed to the establishment of a field presence of the Office of the U.N. High Commissioner for Human Rights in Sri Lanka with sufficient staff and mandate to conduct full and unfettered monitoring throughout the country and to publicize its findings.
 - This prohibition shall not apply to technology or equipment made available for the limited purpose of maritime and air surveillance and communications.

Iraq (Section 699K)

- No funds appropriated or otherwise made available by this Act may be made available for assistance for **Iraq**.
- This prohibition shall not apply to ESF funding for the rescue of Iraqi scholars and for the fund established by Section 2108, P.L.109-13, and to funds made available under NADR for the removal and disposal of landmines and other unexploded ordnance, small arms and light weapons in Iraq, or for assistance for refugees and internally displaced persons.
- Section 2108, P.L.109-13, established and initially funded the Maria Ruzicka Iraqi War Victims Fund to provide assistance for families and communities of Iraqi civilians who have suffered losses as a result of military operations.

Anti-Kleptocracy (Section 699L)

- In furtherance of the *National Strategy to Internationalize Efforts Against Kleptocracy* and Presidential Proclamation 7750, the Secretary of State is to compile and maintain a list of foreign government officials and their immediate family members determined by the Secretary there is credible evidence to believe have been involved in corruption relating to the extraction of natural resources in their countries.
- Any person on the list is to be ineligible for admission to the U.S.
- The Secretary may waive this entry prohibition when determined that admission is necessary to attend the U.N. or to further U.S. law enforcement objectives, or that the circumstances which caused the individual to be on the list have sufficiently changed to justify removal from the list.
- Not later than ninety days after enactment of this Act, and 180 days thereafter, the Secretary shall submit a report, if necessary classified, to the congressional appropriations committees describing the evidence considered in determining the individual's involvement to be placed on the list.

Comprehensive Nuclear Threat Reduction and Security Plan (Section 699M)

- Not later than 180 days after enactment of this Act, the President shall submit to Congress a comprehensive nuclear threat reduction and security plan, in classified and unclassified form, for:
 - Ensuring that all nuclear weapons and weapons-usable material at vulnerable sites are secure by 2012 against the threats that terrorists have shown they can pose.
 - Working with other countries to ensure adequate accounting and security for such materials on an ongoing basis thereafter. For each element of the accounting and security effort described, the plan shall:

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- Clearly designate agency and departmental responsibility and accountability.
 - Specify program goals, with metrics for measuring progress, estimated schedules, and specified milestones to be achieved.
 - Provide estimates of the program budget requirements and resources to meet the goals for each year.
 - Provide a strategy for diplomacy and related tools and authority to accomplish the program element.
 - Provide a strategy for expanding the financial support and other assistance provided by other countries, particularly Russia, the E.U. and its member states, China, and Japan, for the purposes of securing nuclear weapons and weapons-related material worldwide.
 - Outline the progress in and impediments to securing agreement from all countries that possess nuclear weapons or weapons-usable material on a set of global nuclear security standards, consistent with their obligation to comply with U.N. Security Council Resolution 1540.

Prohibition on Promotion of Tobacco (Section 699N)

- No funds in this Act shall be used to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type.

Unobligated Funds Rescissions (Section 699O)

- Of the funds appropriated under ESF in prior acts making appropriations for FOAAs, \$133,000,000 is rescinded.

Across-the-Board Rescission (Section 699P)

- A 0.81 percent rescission (or reduction) is to be applied to any discretionary account in this FY 2008 appropriations act for the S/FOAA.
 - The rescissions are to be applied proportionately as follows:
 - To each discretionary account and each item of budget authority.
 - Within each such account and item, to each program, project, and activity; with programs, projects, and activities as delineated in the appropriations act or accompanying explanatory statements for the relevant FY covering such account or item, or for accounts and items not included in appropriations acts, as delineated in the most recently submitted President's Budget.
 - The rescission is not to be applied to funds identified as emergency requirements.
- The OMB is to submit a report within thirty days after enactment of this Act to the congressional appropriations committees specifying the account and amount of each rescission.
- It must be noted that the other eleven appropriations within the overall *Consolidated Appropriations Act, 2008*, P.L.110-161, 26 December 2007, included specific program rescissions and varying rescission percentages to be applied similarly across-the-board

to their initial appropriations. The only appropriation exempted from this process was the *Emergency Supplemental Appropriations Act for Defense, 2008*, Division L, P.L.110-161, 26 December 2007.

National Defense Authorization Act for Fiscal Year 2008, P.L.110-181, 28 January 2008

- Originally introduced as H.R. 1585 on 20 March 2007 and was referred to the HASC. Approved by the HASC on 9 May 2007 and reported out on 11 May 2007 with H.Rpt.110-146 followed on 14 May 2007 with H.Rpt. 110-146, Part II. The House approved the bill on 17 May 2007 for forwarded to the Senate. After several parliamentary delays and floor amendments, the Senate approved the bill on 1 October 2007, with no recorded action by the Senate Armed Services Committee (SASC). The conference was not held until December 2007 reporting out on 6 December 2007 with H.Rpt.110-477. The House and Senate approved the bill on 12 and 14 December 2007, respectively. The approved bill, H.R. 1585, was presented to the President on 19 December 2007 for enactment. Objecting to a provision allowing victims of state-sponsored terrorism to sue a foreign government and collect judgment on seized assets, the President vetoed H.R. 1585 on 28 December 2007. It was determined that this provision could have potentially frozen an estimated \$25,000,000,000 in Iraqi assets in the U.S. to be tied up in litigation.
- Reconvening on 15 January 2008, H.R. 1585 was reintroduced and passed by the House on 16 January 2008 as H.R. 4986. The new bill provided for an immunity waiver by the President (new Section 1083) if determined to promote Iraqi reconstruction and the Iraqi government remains a “reliable ally” in the fight against terrorism. The Senate passed H.R. 4986 on 22 January 2008. It was enacted on 28 January 2008 as P.L.110-181.

Division A – Department of Defense Authorizations

Title I – Procurement

Transfer to the Government of Iraq of three C-130E Tactical Airlift Aircraft (Section 136)

- Authorizes the Secretary of the Air Force to transfer not more than three C-130E aircraft to the government of Iraq.

Title II – Research, Development, Test, and Evaluation

Requirement to Obligate and Expend Funds for Development and Procurement of a Competitive Propulsion System for the Joint Strike Fighter (Section 213)

- Any funds appropriated pursuant to an authorization of appropriations or other wise made available for FY 2008 or any year thereafter for research, development, test, and evaluation and procurement for the Joint Strike Fighter (JSF) program, the Secretary of Defense shall ensure the obligation and expenditure in each FY of sufficient amounts for the continued development and procurement of two options for the propulsion of the JSF in order to ensure the development and competitive production for the JSF propulsion system.

Limitation on Use of Funds for Replacing Warhead on SM-3 Block IIA Missile (Section 224)

- No funds appropriated or otherwise made available pursuant to an authorization in this act may be obligated or expended to replace the unitary warhead on the SM-3 Block IIA missile with the Multiple Kill Vehicle until the Secretary of Defense certifies to Congress the following:

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- The U.S. and Japan have reached an agreement to replace the unitary warhead.
 - Replacing this warhead with the Multiple Kill Vehicle will not delay the expected deployment date of 2014-2015 for that missile.

Sense of Congress on Missile Defense Cooperation with Israel (Section 227)

- Congress expresses its sense that the U.S. should have an active ballistic missile defense cooperation program with Israel. Also, steps should be taken to improve the coordination, interoperability, and integration of the **U.S. and Israeli missile defense capabilities**, and to enhance the capability of both nations to defend against ballistic missile threats present in the Middle East region.
- Not later than 180 days after enactment, the Secretary of Defense shall submit a report to the congressional defense committees regarding the status of defense cooperation between the U.S. and Israel to include a description of:
 - The current U.S. and Israeli ballistic missile defense cooperation program to include its objectives and results to date.
 - Steps taken within the previous five years improve U.S. and Israeli ballistic missile defense interoperability and coordination.
 - Steps planned to be taken by the U.S. and Israel to improve the coordination, interoperability, and integration of missile defense capabilities.
 - Joint U.S. and Israeli efforts to develop ballistic missile defense technologies.
 - Joint U.S. and Israeli missile defense exercises and training that have been conducted and the lessons learned from those exercises.
 - Joint U.S. and Israeli missile defense testing activities, past and planned, and the benefits of such testing activities.
 - How the U.S. and Israel share threat assessments regarding the ballistic missile threat.
 - Any other matter the Secretary considers appropriate.

Policy of the United States on Protection of the United States and its Allies against Iranian Ballistic Missiles (Section 229)

- Congress finds that Iran maintains a nuclear program in continued defiance of the international community while developing ballistic missiles of increasing sophistication and range that pose a threat to forward-deployed U.S. forces, NATO in Europe, other allies and friendly countries in the region, and eventually to the U.S. homeland.
- Congress states the policy of the U.S. to:
 - Develop, test, and deploy in conjunction with allied and friendly countries whenever possible an effective defense against the **Iranian ballistic missile threat**.
 - Encourage the NATO alliance to accelerate its efforts to protect NATO territory in Europe and to facilitate the ability of NATO allies to acquire the missile defense systems needed to provide a wide-area defense capability against short and medium range ballistic missiles.

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- Proceed with the above stated activities in a manner such that any missile defense systems fielded by the U.S. in Europe are integrated with or complementary to missile defense systems fielded by NATO in Europe.

Modification of Notice and Wait Requirement for Obligation of Funds for Foreign Comparative Test Program (Section 237)

- 10 U.S.C. 2350a(g)(3) is amended so the Director (vice Deputy Director) of Defense Research and Engineering shall notify the congressional defense committees of the intent to obligate **Foreign Comparative Test** (FCT) program funds not less than seven (vice thirty) days before the funds are obligated.

Title VIII – Acquisition Policy, Acquisition Management, and Related Matters

Prevention of Export Control Violations (Section 890)

- Not later than 180 days after enactment of this Act, the Secretary of Defense shall prescribe regulations requiring any contractor under contract with DoD to provide goods or technology subject to export controls under the AECA or the EAA of 1979 (as continued in effect under the *International Emergency Economic Powers Act*) to comply with those acts and applicable regulations with respect to such goods and technology, to include the **ITAR and the EAR**.
- Regulations prescribed under this section shall include a contract clause enforcing such requirement.
- The Secretary shall ensure that any above described contractor is made aware of any relevant resources made available by the Departments of State and Commerce to assist in compliance with the above established requirement and the need for a corporate compliance plan and periodic internal audits of corporate performance under such plans.
- Not less than 180 days after enactment of this Act, the Secretary shall submit to the congressional armed services committees a report assessing the utility of:
 - Requiring a defense contractor or subcontractor at any tier to periodically report on measures taken to ensure compliance with the ITAR and EAR.
 - Requiring periodic audits of defense contractors or subcontractors at any tier to ensure compliance with all provisions of the ITAR and EAR.
 - Requiring defense contractors to maintain a corporate training plan to disseminate information to appropriate contractor personnel regarding the applicability of the AECA and the EAA.
 - Requiring a designated corporate liaison available for training provided by the U.S. government whose primary responsibility would be contractor compliance with the AECA and EAA.

Competition for Procurement of Small Arms supplied to Iraq and Afghanistan (Section 892)

- The Secretary of Defense shall ensure, consistent with 10 U.S.C. 2304, that for the procurement of **pistols and other small arms**:
 - Full and open competition is obtained to the maximum extent practicable.

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- No responsible U.S. manufacturer is excluded from competing for such procurements.
 - Products manufactured in the U.S. are not excluded from the competition.
 - This section applies to the procurement of pistols and other weapons less than .50 caliber for assistance to:
 - The **Iraqi Army**, Iraqi Police Forces, and other Iraqi security organizations.
 - The **Afghanistan Army**, the Afghani Police Forces, and other Afghani security organizations.

Title IX – Department of Defense Organization and Management

Flexibility to Adjust the Number of Deputy Chiefs and Assistant Chiefs (Section 902)

- 10 U.S.C. 3045(b) is amended authorizing the **Secretary of the Army** to prescribe not more than a total of eight Deputy and Assistant Chiefs of Staff. The previous numbers were five Deputy and three Assistant Chiefs of Staff.
- 10 U.S.C. 5036(a) and 5037(b) are amended authorizing the **Secretary of the Navy** to prescribe not more than a total of eight Deputy and Assistant Chiefs of Naval Operations. The previous numbers were five Deputy and three Assistant Chiefs of Naval Operations.
- 10 U.S.C. 8035(b) is amended authorizing the **Secretary of the Air Force** to prescribe more than a total of eight Deputy and Assistant Chiefs of Staff. The previous numbers were five Deputy and three Assistant Chiefs of Staff.

Change in Eligibility Requirements for Appointment to Department of Defense Leadership Positions (Section 903)

- 10 U.S.C. 113(a) is amended to allow the person to be appointed as **Secretary of Defense** within seven (vice ten) years after relief from active duty as a commissioned officer of a regular component of an armed service.
- 10 U.S.C. 132(a) is likewise amended to allow a person to be appointed as **Deputy Secretary of Defense** within seven (vice ten) years after relief from active duty as a commissioned officer of a regular component of an armed service.

Management of the Department of Defense (Section 904)

- 10 U.S.C. 132 is amended with a new section 132(c) establishing the position of **Chief Management Officer (CMO)** of the DoD with the Deputy Secretary of Defense serving in this new position. The duties and authorities are to include effectively and efficiently organize the business operations of the Department of Defense. There is also to be a Deputy Chief Management Officer to assist the CMO in assigned business operations duties.
- Section 904(b) directs the Secretaries of the MILDEPs to assign duties and authorities relating to the management of business operations of such MILDEP to a **MILDEP CMO** which would be the existing Under Secretary of the MILDEP to have primary management responsibility for business operations.
- The Secretary of Defense, acting through the CMO, shall develop a DoD strategic management plan to be updated no later than 1 July 2009, and every two years thereafter,

with a copy provided to the congressional armed services committees. This plan is to include as a minimum detailed descriptions of:

- Performance goals and measures for improving and evaluating the overall efficiency and effectiveness of DoD business operations and achieving an integrated management system for DoD business support area.
- Key initiatives to be undertaken by DoD to achieve these performance goals together with related resource needs.
- Procedures to monitor the progress of DoD in meeting these performance goals and measures.
- Procedures to review and approve plans and budgets for changes in business operations, including any proposed changes to policies, procedures, processes, and systems, to ensure the compatibility of such plans and budgets with the DoD strategic management plan.
- Procedures to oversee the development of, and review and approve, all budget requests for defense business systems.
- Not later than 180 days after enactment of this Act, the Secretary of Defense shall provide a report to the congressional armed services committees regarding the implementation of this section and a copy of the strategic management plan.

Modification of Background Requirement of Individuals Appointed as Under Secretary of Defense for Acquisition, Technology, and Logistics (Section 907)

- 10 U.S.C. 133(a) is amended by removing the requirement that the person appointed to **USD (AT&L)** having extensive management experience that this experience must be in the “private sector.”

Assistant Secretaries of the Military Departments for Acquisition Matters; Principal Military Deputies (Section 908)

- 10 U.S.C 3016(b) is amended that one of the assistant secretaries shall be the **Assistant Secretary of the Army for Acquisition, Technology, and Logistics** with the principal duty having overall supervision of acquisition, technology, and logistics matters in the Department of the Army.
- This Assistant Secretary shall have a lieutenant general of the Army on active duty as **Principal Military Deputy** with significant experience in the areas of acquisition and program management.
- 10 U.S.C. 5016(b) is amended that one of the assistant secretaries shall be the **Assistant Secretary of the Navy for Research, Development, and Acquisition** with principal duty having overall supervision of research, development, and acquisition matters in the Department of the Navy.
- This Assistant Secretary shall have a vice admiral of the Navy or a lieutenant general of Marine Corps on active duty as **Principal Military Deputy** with significant experience in the areas of acquisition and program management.
- 10 U.S.C. 8016(b) is amended that one of the assistant secretaries shall be the **Assistant Secretary of the Air Force for Acquisition** with the principal duty having overall supervision of acquisition matters of the Department of the Air Force.

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- This Assistant Secretary shall have a lieutenant general of the Air Force on active duty as **Principal Military Deputy** with significant experience in the areas of acquisition and program management.
 - Each Principal Military Deputy to a service acquisition executive shall be responsible for keeping the Chief of Staff of the Armed Forces concerned informed of the progress of major defense acquisition programs.

Sense of Congress on Term of Office of the Director of Operational Test and Evaluation (Section 909)

- The sense of Congress is expressed that the term of office of the **Director of Operational Test and Evaluation** should not be less than five years.

Technical Amendments to Title 10, United States Code, arising from Enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Section 931)

- Provides a lengthy list of 10 U.S.C. sections where the “Director of Central Intelligence” is to be replaced with “Director of National Intelligence.”
- Amends 10 U.S.C. 201(b)(1) that the Secretary of Defense shall obtain the concurrence of the **Director of National Intelligence** when recommending an individual to fill the vacant position of Director, Defense Intelligence Agency.

Comptroller General Assessment of Reorganization of the Office of the Under Secretary of Defense for Policy (Section 957)

- Not later than 1 June 2008, the Comptroller General is to submit to the congressional defense committees a report containing the directed, lengthy assessment of the most recent **reorganization of the office of the USD(P)**. Among the areas to be assessed include:
 - Impact of the large increase in responsibilities for the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict and Interdependent Capabilities [ASD(SOLIC-IC)].
 - The possible decrease in attention given to special operations issues resulting from the increase in responsibilities of ASD(SOLIC-IC) to include responsibility for strategic capabilities, forces transformation, and major budget programs.
 - The possible diffusion of attention from counternarcotics, counterproliferation, and global threat issues resulting from the merging of these responsibilities under a single Deputy Assistant Secretary of Defense for Counternarcotics, Counterproliferation, and Global Threats.
 - The unique placement of both functional and regional issue responsibilities under the Assistant Secretary of Defense for Homeland Defense and Americas’ Security Affairs.
 - The differentiation between the responsibilities of the Deputy Assistant Secretary of Defense for Partnership Strategy and the Deputy Assistant Secretary of Defense for Coalition Affairs and the relationship between such officials.

Title X – General Provisions

General Transfer Authority (Section 1001)

- The Secretary of Defense may transfer up to a total of \$5,000,000,000 between authorizations. This total limit shall not include personnel authorizations accounts.
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Financial Management Transformation Initiative for Defense Agencies (Section 1005)

- Requires the Director of the Business Transformation Agency (BTA) of the DoD to carry out an initiative for financial management transformation in the DoD agencies. This initiative shall be called the **“Defense Agencies Initiative.”**
- BTA may require the heads of the DoD agencies to carry out actions that are within the below stated purpose of this Initiative.
 - To eliminate or replace the financial management systems of DoD agencies that are duplicative, redundant, or fail to comply with the later stated below standards.
 - To transform the budget, finance, and accounting operations of the DoD agencies to enable the agencies to achieve accurate and reliable financial information needed to support financial accountability and effective and efficient management decisions.
- The Initiative shall include, to the maximum extent practicable:
 - The utilization of commercial, off-the-shelf technologies and web-base solutions.
 - Standardized technical environment and an open and accessible architecture.
 - Implementation of common business processes, shared services, and common data structures.
- BTA shall ensure that the Initiative is consistent with the following standards:
 - The requirements of the Business Enterprise architecture and Transition Plan developed pursuant to 10 U.S.C. 2222.
 - The Standard Financial Information Structure of the DoD.
 - The *Federal Financial Management Improvement Act of 1996*, and the amendments made by this Act.
 - Other applicable requirements of law and regulation.
- The Initiative shall be designed to provide, at a minimum, capabilities in the major process areas for both general fund and working capital fund operations of the DoD agencies as follows:
 - Budget formulation.
 - Budget to report, including general ledger and trial balance.
 - Procure to pay, including commitments, obligations, and accounts payable.
 - Order to fulfill, including billing and accounts receivable.
 - Cost accounting.
 - Acquire to retire (account management).
 - Time and attendance and employee entitlement.
 - Grants financial management.

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- The Director, BTA, shall consult with the DoD Comptroller to ensure that financial management systems developed for the DoD agencies and any changes to the budget, finance, and accounting operations of the DoD agencies are consistent with financial standards and requirements of the DoD.
 - BTA shall establish a Configuration Control Board (CCB) to manage scope and cost changes to the Initiative. A PMO is to also be established to control and enforce assumptions made in the acquisition plan, the cost estimate, and the system integration contract for the Initiative as directed by the CCB.
 - Not later than six months after enactment of this Act, the Director, BTA, shall submit to the congressional defense committees a plan for the development and implementation of the Initiative. The plan shall provide for the implementation of an initial capability under the Initiative as follows:
 - In at least one DoD agency not later than eight months after enactment of this Act.
 - In not less than five DoD agencies not later than eighteen months after enactment of this Act.

Expansion of Authority to Provide Additional Support for Counter-Drug Activities in Certain Foreign Countries (Section 1022)

- Section 1033(b) of the NDAA for FY 1998, P.L.105-85, 18 November 1997, as amended by Section 1021(b) of the NDAA for FY 2004, P.L.108-136, 24 November 2003, and Section 1022(b) of the NDAA for FY 2007, P.L.109-364, 17 October 2006, regarding countries eligible to receive “1033” non-lethal DoD-funded equipment and services for counternarcotics purposes are amended. This section adds the governments of **Mexico and the Dominican Republic** to receive such assistance bringing the number of eligible countries to eighteen.
- SAMM, C11.3, provides guidance in using non-FMS pseudo LOAs to provide this authorized assistance.

Report on Counternarcotics Assistance for the Government of Haiti (Section 1023)

- Not later than 120 days after enactment of this Act, the President shall submit to Congress a report on counternarcotics assistance for **Haiti** to include:
 - A description and assessment of the counternarcotics assistance provided to Haiti by the DoD, DoS, Department of Homeland Security, and Department of Justice.
 - A description and assessment of any impediments to increasing such assistance to Haiti.
 - An assessment of the potential for the provision of such assistance for Haiti through the U.N. Stabilization Mission in Haiti.

Provision of Air Force Support and Services to Foreign Military and State Aircraft (Section 1031)

- 10 U.S.C. 9626 is amended and retitled “Aircraft Supplies and Services; Foreign Military or Other State Aircraft” authorizing the Secretary of the Air Force to provide, when in the best interests of the U.S., **supplies or services to military and other state aircraft of a country**, on a reimbursable basis without an advance of funds, if similar supplies and services are furnished on a like basis to U.S. military and other state aircraft by the subject country.

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- The supplies and services authorized in this section are to include routine airport services, including landing and takeoff assistance, servicing aircraft with fuel, use of runways, parking and servicing, and loading and unloading of baggage and cargo. Also to include miscellaneous supplies, including Air Force–owned fuel, provisions, spare parts, and general stores, but not including ammunition.
 - The provision of routine airport services may be provided on a non-reimbursable basis if such services are provided by Air Force personnel and equipment without direct cost to the Air Force, and such services are provided under an agreement by the country to U.S. military and other state aircraft without reimbursement.
 - If the routine airport services to be provided are from a working-capital fund activity, the services shall be reimbursed by the Air Force operation and maintenance funds.

Prohibition on Sale of F-14 Fighter Aircraft and Related Parts (Section 1035)

- DoD may not directly or indirectly sell any **F-14 aircraft**, parts unique to the F-14, or any tooling or dies used in the manufacture of such aircraft or parts. This is to apply to the Defense Reutilization and Marketing Service (DRMS) and any other agency or element of DoD.
- This prohibition is not to apply to the sale of such aircraft or parts to a museum or similar organization located in the U.S. that is involved in the preservation of F-14s for historical purposes.
- No license for the export of any F-14s, part unique to the F-14, or any tooling or dies used in the manufacture of F-14s or parts may be issued by the U.S. government to a non-U.S. person or entity.

Terrorism Exception to Immunity (Section 1083)

- In general: provides a new 28 U.S.C. 1605A, terrorism exception to the **jurisdictional immunity of a foreign state**.
 - New 28 U.S.C. 1605A(1).

No Immunity – A foreign state shall not be immune from the jurisdiction of courts of the U.S. or of the States in any case not otherwise covered of this chapter in which money damages are sought against a foreign for personal injury or death that was caused by an act or torture, extra judicial killing, aircraft sabotage, hostage taking, or the provision of material support or resources for such an act if such act or provision of material support or resources is engaged in by an official, employee, or agent of such foreign state while acting within the scope of his or her office, employee, or agency.

- The applicable court shall hear a claim under this section if the foreign state was designated as a state sponsor or terrorism at the time of the act, either remains so designated when the claim is filed or was so designated within the six month period before the claim if filed.
- A U.S. national, member of the armed forces, an employee of the U.S. government or of an individual performing a contract awarded by the U.S. government acting within the scope of employment or the legal representative of such described individuals may file any such claim under this section for personnel injury or death plus damages against the foreign state or any official of that state.

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- In every such action, the applicable U.S. district court may establish a lien of “lis pendens” on any real property or tangible personal property of the accused foreign state or officials.
 - 10 U.S.C. 1605A(d) authorizes the President to waive any provision of this section with respect to Iraq if in the President’s determination:
 - The waiver is in the national security interest of the U.S.
 - The waiver will promote the reconstruction of, the consolidation of democracy in, and the relations of the U.S. with, Iraq.
 - Iraq continues to be a reliable ally of the U.S. and partner in combating acts of international terrorism.
 - This waiver shall apply:
 - With respect to any conduct or event occurring before or on the date of enactment of this Act.
 - With respect to any conduct or event occurring before or on the date of the exercise of that waiver authority.
 - Regardless of whether, or the extent to which, the exercise of that waiver authority affects any action filed before, on or after the date of exercising of that waiver authority or of the enactment of this Act.
 - A waiver by the President under this authority shall cease to be effective thirty days after it is made unless the President has notified Congress in writing of the basis for the waiver as determined by the President.
 - This determination and waiver was provided as Presidential Determination 2008-9 on 28 January 2008, the same date of enactment of this Act. The Secretary of State was authorized and directed to notify Congress of this Action.
 - On 21 February 2008, the *Federal Register* indicated the DoS transmitted to Congress on 4 February 2008 this waiver determination with an accompanying memorandum of justification.

Title XII – Matters Relating to Foreign Nations

Military-to-Military Contacts and Comparable Activities (Section 1201)

- 10 U.S.C. 168(c) is amended with an additional paragraph (9) authorizing the **assignment of personnel on a non-reciprocal basis** if the Secretary of Defense determines that such an assignment, rather than exchange of personnel, is in the interests of the U.S.
- This non-reciprocal authority is to only apply to (1) exchanges of civilian or military personnel between DoD and defense ministries of foreign governments, and (2) exchanges of military personnel between units of the armed forces and units of foreign armed force.

Authority for Support of Military Operations to Combat Terrorism (Section 1202)

- Section 1208 of the NDAA, FY 2005, P.L.108-375, 28 October 2004, provided authority for the Secretary of Defense to expend up to \$25,000,000 annually through FY 2007 to provide support to foreign forces, irregular forces, groups, or individuals engaged in

supporting or facilitating ongoing military operations by **U.S. special operations forces to combat terrorism**. The congressional defense committees are to be expeditiously notified in writing when this authority is exercised. The Secretary authority to use funds under this authority may not be delegated.

- Section 1202(c) of this Act extends this authority through FY 2010.

Medical Care and Temporary Duty Travel Expenses for Liaison Officers of Certain Countries (Section 1203)

- 10 U.S.C. 1051(a) is amended to authorize **subsistence and medical payment for liaison officers** involved in a military operation (vice coalition). Also authorizes funding for medical care at a civilian medical facility if adequate care is not available at a local military medical facility and the Secretary of Defense determines such funding is necessary and in the best interest of the U.S. and medical care is not otherwise available to the liaison officer pursuant to any treaty or other international agreement.
- The Secretary may also authorize the payment of mission-related travel expenses if such travel is in support of U.S. national interests and the commander of the headquarters to which liaison officer is temporarily assigned directs round-trip travel for the headquarters to one or more locations.

Extension and Expansion of Department of Defense Authority to Participate in Multinational Military Centers of Excellence (Section 1204)

- Section 1205 of NDAA, FY 2007, P.L.109-364, 17 October 2006, authorized the use of FY 2007 DoD funding for members of the armed forces and DoD civilian personnel to **participate in any multinational military center of excellence** hosted by any nation or combination of nations for the purposes of enhancing the ability of military forces and civilian personnel of the participating nations in such centers to engage in joint exercises or coalition or international military operations or improving interoperability between the U.S. military armed forces and military forces of foreign nations.
- This section extends the authority to include FY 2008.
- This section also provides that the funding for the enhancement of education and training under this authority may not exceed \$3,000,000 during FY 2007 and \$5,000,000 during FY 2008.

Reauthorization of Commander's Emergency Response Program (Section 1205)

- Section 1202 of NDAA, FY 2006, P.L.109-163, 6 January 2006, authorized the funding of the **Commander's Emergency Response Program (CERP)** during FY 2006 and FY 2007 at \$500,000,000 annually.
- This section expands and extends the CERP funding authority to \$977,441,000 annually during FY 2008 and FY 2009.

Authority to Build the Capacity of the Pakistan Frontier Corps (Section 1206)

- The Secretary of Defense, with the concurrence of the Secretary of State, is authorized to provide up to \$75,000,000 from O&M during FY 2008 to provide assistance to enhance the ability of the **Pakistan Frontier Corps** to conduct counterterrorism operations along the border between Pakistan and Afghanistan. This assistance may include equipment, supplies, and training.

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- This assistance shall be provided in a manner that promotes:
 - Observance of and respect for human rights and fundamental freedoms.
 - Respect for legitimate civilian authority within Pakistan.
 - The Secretary may not use this authority to provide any type of assistance that is otherwise prohibited by any provision of law.
 - Not less than fifteen days before providing such assistance, the Secretary shall submit to the congressional armed services, foreign affairs, and appropriations committees a notice to include:
 - The budget, types of assistance and completion date for providing the assistance.
 - The source and planned expenditure of funds for the assistance.
 - This FY 2008 “1206” authority must not be confused with the DoD “1206” authority in the NDAA, FY 2006, as amended, P.L.109-163, 6 January 2006, to provide up to \$300,000,000 annually through FY 2008 for “Building the Capacity of Foreign Military Forces.”

Authority to Equip and Train Foreign Personnel to Assist in Accounting for Missing United States Government Personnel (Section 1207)

- Provides for a new DoD assistance authority codified as 10 U.S.C. 408 for the Secretary of Defense to provide equipment, supplies, services, and training to any country to assist DoD with recovery of and accounting for **missing U.S. government personnel**.
- The value of assistance may not exceed \$1,000,000 in any FY and must have the Secretary of State’s specific approval for the provision of the assistance.
- This assistance is in addition to any other authority to provide assistance to foreign nations under law.
- Not later than 31 December each year, the Secretary of Defense shall submit a report to the congressional defense committees regarding the assistance provided under this authority during the previous FY.

Report on Foreign-Assistance Related Programs Carried out by the Department of Defense (Section 1209)

- Not later than 180 days after enactment of this Act, the Secretary of Defense shall submit to the congressional appropriations, armed services, and foreign relations committees a report that specifies, on a country-by-country basis, **each foreign-assistance related program carried out by DoD** during the prior FY under the following authorities:
 - Section 1206 of NDAA, FY 2006, P.L.109-163, 6 January 2006
 - Section 1207 of NDAA, FY 2006, P.L.109-163, 6 January 2006
 - Section 1208 of NDAA, FY 2006, P.L.109-163, 6 January 2006
 - Section 1033 of NDAA, FY 1998, P.L.105-85, 18 November 1997
 - Section 1004 of NDAA, FY 1991, P.L.101-510, 5 November 1990
 - 10 U.S.C. 127d

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- 10 U.S.C. 2249c
 - 10 U.S.C. 2561
 - The report is to also include a description of each foreign-assistance related program that DoD undertakes or implements on behalf of any other department or agency of the U.S. government, **including programs under the FAA and the AECA.**

Extension and Enhancement of Authority for Security and Stabilization Assistance (Section 1210)

- This section extends and changes the method of implementation of Section 1207, of the NDAA, FY 2006, P.L.109-163, 6 January 2006, authorizing during FY 2006 and FY 2007 the Secretary of Defense to provide up to \$100,000,000 annually in defense articles, services, and funding to the Secretary of State for the purposes of facilitating the provision by the Secretary of State of reconstruction, security, or stabilization assistance to a country.
- This “**1207**” **authority** is extended through FY 2008.
- The Secretary of State shall coordinate with the Secretary of Defense in the formulation and implementation of a program of reconstruction, security, or stabilization assistance to a country involves the provision of DoD articles, services, or funds.

Government Accountability Office Report on Global Peace Operations Initiative (Section 1211)

- The President first approved the five-year **GPOI** on 1 April 2004 to help address major gaps in international peace operations support. The Initiative was presented at the June 2004 G-8 Sea Island GA summit with the G-8 leaders committing to an action plan for “expanding global capability for peace support operations.” The commitments included:
 - Train and equip 75,000 military peace operations troops worldwide by 2010 with an emphasis on Africa.
 - Develop a transportation and logistics support arrangement to help deploy and sustain troops during peace operations.
 - Support an Italian initiative to establish an international training center to train stability police units to participate in peace operations.
 - GPOI began in FY 2005 by incorporating previous peacekeeping programs – Enhanced International Peacekeeping Capabilities (EIPC) and Africa Contingency Training and Assistance (ACOTA) programs. Though a part of GPOI, the ACOTA program continues to exist in training and equipping selected African militaries.
- Not later than 1 June 2008, the Comptroller General shall submit a report to the congressional defense and foreign relations committees assessing the GPOI program to include:
 - An assessment of whether, and to what extent, GPOI has met the 2004 goals.
 - Which goals, if any, remain unfulfilled.
 - A description of activities conducted by each G-8 member, including the approximate cost of the activities, and the approximate percentage of the total monetary value of the activities conducted by each G-8 member, including the U.S., as well as efforts by the President to seek contributions or participation by other G-8 members.

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- A description of any activities conducted by non G-8 members, or other organizations and institutions, as well as any efforts by the President to solicit contributions or participation.
 - A description of the extent to which GPOI has had global participation.
 - A description of the administration of the program by the DoS and DoD, including:
 - Whether each department should concentrate administration in one office or bureau, and if so, which one?
 - The extent to which the two departments coordinate and the quality of their coordination.
 - The extent to which contractors are used and an assessment of the quality and timeliness of the results achieved by the contractors, and whether the U.S. government might have achieved similar or better results without contracting out functions.
 - A description of the metrics, if any, that used by the President and the G-8 to measure progress in implementation of GPOI, including:
 - Assessments of the quality and sustainability of the training of individual soldiers and units.
 - The extent to which the G-8 and participating countries maintain records or databases of trained individuals and units and conduct inspections to measure and monitor the continued readiness of such individuals and units.
 - The extent to which the individuals and units are equipped and remain equipped to deploy in peace operations.
 - The extent to which, the timeline by which, and how individuals and units can be mobilized for peace operations.
 - The extent to which, the timeline by which, and how individuals and units can be and are being deployed for peace operations.
 - An assessment of whether individuals and units trained under GPOI have been utilized in peace operations subsequent to receiving training through the Initiative, whether they will be deployed to upcoming operations in Africa and elsewhere, and the extent to which such individuals and units would be prepared to deploy and participate in such peace operations.
 - Recommendations as to whether participation in GPOI should require reciprocal participation by countries in peace operations.
 - Any additional measures that could be taken to enhance the effectiveness of GPOI in terms of:
 - Achieving its stated goals.
 - Ensuring that individuals and units trained as part of the Initiative are regularly participating in peace operations.
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Repeal of Limitations on Military Assistance under the *American Servicemembers' Protection Act of 2002* (Section 1212)

- *American Servicemembers' Protect Act of 2002* (ASPA) was enacted as Title II, Sections 2001-2015 of the *2002 Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States*, P.L.107-206, 2 August 2002. Section 2007(a) prohibited U.S. military assistance to countries that are parties to the Rome Statute. The purpose of ASPA was to protect U.S. personnel in countries from extradition by that country to the International Criminal Court (ICC) or any provision of classified national security information or law enforcement information by that country to the ICC.
- Section 2013(13) defined military assistance to include grant EDA, IMET, drawdown and FMFP assistance.
 - Section 1222 of NDAA, FY 2007, P.L.109-364, 17 October 2006, amended this section to remove IMET from the prohibition.
- Section 2007(b) of ASPA provided for the President to waive this prohibition if determined and reported to the congressional foreign relations committees that such a waiver is important to U.S. national interests.
- Section 2007(c) of ASPA provided for the President to also waive this prohibition for a country that enters into an "Article 98 Agreement" preventing the ICC from proceeding against U.S. personnel present in such country.
- Section 2007(d) of ASPA legislated the exemption of this prohibition for NATO countries, major non-NATO allies and Taiwan.
- This section repeals the entire Section 2007. **ASPA prohibitions are no longer applicable** to U.S. security assistance.

Sense of Congress on the Consequences of a Failed State in Iraq (Section 1226)

- Congress expresses its sense that a failed state in **Iraq** will have a negative impact on the Middle East and U.S. interests in the region, and the U.S. should pursue strategies to prevent a failed state in Iraq or to contain the negative effects of a failed state in Iraq.

Tracking and Monitoring of Defense Articles Provided to the Government of Iraq and Other Individuals and Groups in Iraq (Section 1228)

- The President shall implement a policy to control the export and transfer of defense articles into **Iraq**, including implementation of a **registration and monitoring system**.
- No defense articles may be provided to the government of Iraq or any other group, organization, citizen, or resident of Iraq until the President certifies to the specified congressional committees a registration and monitoring system for the later specified defense articles and small arms has been established.
- This required registration and monitoring system shall include:
 - The registration of the serial numbers of all small arms to be provided to the government of Iraq or to other groups, organizations, citizens, or residents of Iraq.
 - A program of end-use monitoring of all lethal defense articles provided to such entities or individuals.

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- A detailed record of the origin, shipping, and distribution of all defense articles transferred under the Iraq Security Forces Fund (ISFF) or any other security assistance program to such entities or individuals.
 - Defense article retains the meaning provided in Section 644(d), FAA, which defines small arms; and does not recognize that defense articles and services as defined in Section 47, AECA.
 - Small arms are specifically defined by this section to include:
 - Handguns
 - Shoulder-fired weapons
 - Light automatic weapons up to and including .50 caliber machine guns
 - Recoilless rifles up to and including 106mm
 - Mortars up to and including 81mm
 - Rocket launchers, man-portable
 - Grenade launchers, rifle and shoulder fired, and individually-operated weapons which are portable or can be fired without special mounts or firing devices and which have potential use in civil disturbances and are vulnerable to theft.
 - The President shall periodically review the items subject to the registration and monitoring requirements and determine what items, if any, should no longer be subject to such requirements.
 - The result of such a review is to be reported to the specified congressional committees.
 - The President may exempt an item from the registration and monitoring requirements beginning on the date that is thirty days after the date on which the President provides notice of the proposed exemption to the specified congressional committees applicable to reprogramming notifications under Section 634A(a), FAA. Any such notice shall describe any controls to be imposed on such item (s) under any other provision of law.
 - The requirements of this section shall take effect 180 days after enactment of this Act. The President may delay this effective date by an additional period of up to 90 days if the President certifies in writing to the specified committees for such additional period that it is in the vital interest of the U.S. to do so and includes in the certification a description of such vital interest.
 - The specified congressional committees for this section include the congressional armed services and foreign relations committees and the Senate Banking, Housing, and Urban Affairs Committee.

Report on Progress toward Security and Stability in Afghanistan (Section 1230)

- Requires the President, acting through the Secretary of Defense, to provide an extensive report not later than ninety days after enactment of this Act and then every 180 days thereafter through FY 2010 to the appropriate congressional committees on progress toward security and stability in Afghanistan.

Report on U.S. Plan for Sustaining the Afghanistan National Security Forces (Section 1231)

- Requires the Secretary of Defense in coordination with the Secretary of State to provide to the congressional armed services, appropriations, and foreign relations committees not later than ninety days after enactment of this Act and annually thereafter through the end of 2010, a report on a detailed plan for sustaining the Afghanistan National Army (ANA) and the Afghanistan National Police (ANP) of the Afghanistan National Security Forces (ANSF). This report must include the following relating to the plan:
 - A comprehensive and effective long-term strategy and budget with defined objectives.
 - A mechanism for tracking funding, equipment, training and services provided for the ANSF by the U.S., countries participating in NATO International Security Assistance Force (ISAF), and other coalition forces that are not part of NATO ISAF
 - Actions to assist the government of Afghanistan to achieve the following goals and the results of such actions:
 - Build and sustain effective Afghan security institutions with fully capable leadership and staff, including a reformed Ministry of Interior, a fully established Ministry of Defense, and logistics, intelligence, medical, and recruiting units (ANSF-sustaining institutions).
 - Train and equip fully capable ANSF that are capable of conducting operations independently and in sufficient numbers.
 - Establish strong ANSF readiness assessment tools and metrics.
 - Build and sustain strong, professional ANSF officers at the junior, mid and senior levels.
 - Develop strong ANSF communication and control between central command and regions, provinces, and districts.
 - Establish a robust mentoring and advising program, and a strong professional military training and education program, for all ANSF officials.
 - Establish effective merit based salary, rank, promotion, and incentive structures for the ANSF.
 - Develop mechanisms for incorporating lessons learned and best practices into ANSF operations.
 - Establish an ANSF personnel accountability system with effective internal discipline procedures and mechanisms and a system for addressing ANSF personnel complaints.
 - Ensure effective ANSF oversight mechanisms, including a strong record-keeping system to track ANSF equipment and personnel.
 - Coordination with all relevant departments and agencies of the U.S. government, as well as NATO ISAF countries and other international partners, including coordination on:
 - Funding
 - Reform and establishment of ANSF sustaining institutions

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- Efforts to ensure progress on sustaining the ANSF is reinforced with progress in other pillars of the Afghan security sector, particularly progress on building an effective judiciary, curbing production and trafficking of illegal narcotics, and demobilizing, disarming and reintegrating militia fighters.

Report on Enhancing Security and Stability in the Region along the Border of Afghanistan and Pakistan (Section 1232)

- Not later than 31 March 2008, the Secretary of Defense, in consultation with the Secretary of State, shall submit a report to the congressional armed services and foreign relations committees on enhancing security and stability in the region along the border of Afghanistan and Pakistan to include:
 - A detailed description of the efforts by the government of Pakistan to achieve the following objectives:
 - Eliminate safe havens for Taliban, al Qaeda, and other violent extremist forces on the national territory of Pakistan.
 - Prevent the movement of such forces across the border of Pakistan into Afghanistan to engage in insurgent or terrorist activities.
 - An assessment of the Secretary of Defense as to whether Pakistan is making substantial and sustained efforts to achieve the above objectives.
- If this report is not submitted by 31 March 2008, then after such date the government of **Pakistan may not be reimbursed** under the authority of later Section 1233 of this Act or any other provision of law under which payments are authorized to reimburse key cooperating nations for logistical, military, or other support provided by that nation to or in connection with U.S. military operations.
- Regarding notification relating to **DoD Coalition Support Funds for Pakistan**, not less than fifteen days before making any reimbursement of the government of Pakistan under the authority of later Section 1233 of this Act or any other provision of law under which payments are authorized to reimburse key cooperating nations for logistical, military or other support provided by that nation to or in connection with U.S. military operations; the Secretary of Defense shall submit a written notification to the congressional defense committees that contains a detailed description of such logistical, military, or other support. This advance notification shall include an itemized description of the following support provided by Pakistan to the U.S. for which the U.S. will provide reimbursement:
 - Logistical support, supplies, and services as such term is defined in 10 U.S.C. 2350(1)
 - This provides extreme detail in defining the term to include:

. . . food, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communications services, medical services, ammunition, base operations support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services, calibration services, and port services. Such term includes temporary use of general purpose vehicles and other nonlethal items of military equipment on the USML promulgated pursuant to Section 38(a)(1), AECA.
 - Military support

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- Any other support or services
 - Each of these advance notifications shall be in addition to any notification requirements under later Section 1233 of this Act and any other provision of law under which payments are authorized to reimburse key cooperating nations for logistical, military or other support provided by that nation to or in connection with U.S. military operations.
 - These advance notification requirements shall apply to reimbursements to the government of Pakistan during the period beginning 1 February 2008 through 30 September 2009.

Reimbursement of Certain Coalition Nations for Support Provided to United States Military Operations (Section 1233)

- Provides authority to the Secretary of Defense to reimburse, up to \$1,200,000,000 from this Act's later Section 1508 for operation and maintenance, defense-wide activities, any **key cooperating nation for logistical and military support** provided by that nation to or in connection with U.S. military operations in Operation Iraqi Freedom or Operation Enduring Freedom.
- The Secretary may not enter into any contractual obligation to make a reimbursement under this authority.
- This reimbursement may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the OM&B, may determine based on documentation determined by the Secretary of Defense to adequately account for the support provided.
- Not later than thirty days after enactment of this Act, the Secretary of Defense shall prescribe standards for determining the kinds of logistical and military support to the U.S. that shall be considered reimbursable under this authority with such standards not to take effect until fifteen days after which the Secretary reports to the congressional defense committees setting forth such standards.
- The Secretary shall notify the congressional defense committees not less than fifteen days before making any reimbursement under this authority and submit a quarterly report to the same committees on any reimbursements under this authority during such quarter.
- Above Section 1232 of this Act includes significant further restrictions and advance notifications regarding reimbursement to the government of Pakistan.

Logistical Support for Coalition Forces Supporting Operations in Iraq and Afghanistan (Section 1234)

- The Secretary of Defense may provide not more than \$400,000,000 of funds available to DoD during FY 2008 for operation and maintenance to provide supplies, services, transportation (including airlift and sealift), and other **logistical support to coalition forces** supporting U.S. military and stabilization operations in Iraq and Afghanistan.
- However, this support may be only provided if the Secretary determines that the coalition forces to be provided the logistical support:
 - Are essential to the success of a U.S. military or stabilization operation.

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- Would not be able to participate in such operation without the provision of the logistical support.
 - This logistical support may be provided only in accordance with applicable provisions of the AECA and other U.S. export control laws.
 - Not later than fifteen days after the end of each FY 2008 quarter, the Secretary shall submit a report to the congressional defense committees on the providing of logistical support under the authority of this section during the recent quarter. This quarterly report shall include:
 - Each nation provided the logistical support under this authority.
 - For each such nation, a description of the type and value of logistical support is provided.

Subtitle C – Iraq Refugee Crisis

- Sections 1241 through 1249 are titled as the *Refugee Crisis In Iraq Act of 2007*.

Countries with Significant Populations of Iraqi Refugees (Section 1246)

- With respect to each country with a significant population of **Iraqi refugees**, including Iraq, Jordan, Egypt, Syria, Turkey, and Lebanon, the Secretary of State shall:
 - As appropriate, consult with the appropriate government officials of such countries and other countries and the U.N. High Commissioner for Refugees regarding resettlement of the most vulnerable such refugee populations.
 - As appropriate, except where otherwise prohibited by U.S. laws, develop mechanisms in and provide assistance to countries with significant population of Iraqi refugees to ensure the well being and safety of such populations in their host environments.

Authorization of Appropriations

- Such sums as may be necessary to carry out this subtitle are authorized to be appropriated.

Subtitle D – Other Authorities and Limitations

Cooperative Opportunities Documents under Cooperative Research and Development Agreements with NATO Organizations and Other Allied and Friendly Foreign Countries (Section 1251)

- 10 U.S.C. 2350a(e) is amended as follows:
 - In paragraph (1): Strike subparagraph “(A)” and inserting “a **cooperative opportunities document** before the first milestone or decision point” in place of “an arms cooperation opportunities document”.
 - Delete entire subparagraph (B).
 - In paragraph (2): Insert “A cooperative opportunities document” in place of “An arms cooperation opportunities document”.

Extension and Expansion of Temporary authority to Use Acquisition and Cross-Servicing Agreements to Lend Military Equipment for Personnel Protection and Survivability (Section 1252)

- Section 1202 of the NDAA, FY 2007, P.L.109-364, 17 October 2006, authorized during FY 2007 and FY 2008 the loan, of up to one year, of certain **SME** within USML categories I, II, III, VII, XI, and XIII using the **ACSA** procedures for logistic support, supplies, and services authorized by Subchapter I, Chapter 138 of 10 U.S.C.
 - The loaned equipment is only for military forces of a country participating in combined operations with the U.S. in Iraq or Afghanistan, and only for personnel protection or to aid in the personnel survivability of those forces.
 - The provision of this equipment under this authority is subject to the provisions of the AECA and of any other export control process under laws relating to the transfer of military equipment and technology to foreign countries.
- The equipment may be provided after the determination by the Secretary of Defense that:
 - U.S. forces in the combined operation have no unfilled requirement for the equipment.
 - With the concurrence of the Secretary of State, it is in the U.S. national security interest to provide such equipment to the military forces of that country.
- Section 1252(a) extends the usage eligibility by also including “or participating in combined operations with the U.S. as part of a peacekeeping operation under the Charter of the U.N. or another international agreement.”
- Section 1252(c) retitles the “1202” authority to “. . . certain foreign forces . . .” in place of “. . . foreign forces in Iraq and Afghanistan . . .”
- Section 1252(b) extends the authority to expire 30 September 2009 (vice 2008).

Sense of Congress on the Western Hemisphere Institute for Security Cooperation (Section 1257)

- It is the sense of Congress that the DoD education and training facility known as Western Hemisphere Institute for Security Cooperation (WHINSEC) has the mission of providing professional education and training to eligible military personnel, law enforcement officials, and civilians of nations of the Western Hemisphere that support the democratic principles set forth in the *Inter-America Charter of the Organization of American States*, while fostering mutual knowledge, transparency, confidence, and cooperation among the participating nations and promoting democratic values, and respect for human rights.
- Also, the Institute is an invaluable education and training facility that DoD should continue to utilize in order to help foster a spirit of partnership and interoperability among the U.S. and participating militaries.

Title XIII – Cooperative Threat Reduction with States of the Former Soviet Union**Funding Allocations (Section 1302)**

- \$428,048,000 is authorized to be appropriated for the FY 2008 DoD Cooperative Threat Reduction Program, to be obligated as follows:
 - \$92,885,000 for strategic offensive arms elimination in Russia.

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- \$47,640,000 for nuclear weapons storage security in Russia.
 - \$37,700,000 for nuclear weapons transportation security in Russia.
 - \$47,986,000 for weapons of mass destruction proliferation prevention in the states of the former Soviet Union.
 - \$158,489,000 for biological weapons proliferation prevention in the former Soviet Union.
 - \$6,000,000 for chemical weapons destruction.
 - \$8,000,000 for defense and military contacts.
 - \$10,000,000 for new Cooperative Threat Reduction initiatives that are outside the former Soviet Union.
 - \$19,348,000 for activities designated as Other Assessments and Administrative Support.

Specification of Cooperative Threat Reduction Programs in States Outside the Former Soviet Union (Section 1303)

- Section 1501 of the NDAA, FY 1997, P.L.104-201, 23 September 1996, is amended with a new Section 1501(c) with respect to **states outside of the former Soviet Union** to include the following programs to:
 - Facilitate the elimination, and the safe and secure transportation and storage, of chemical or biological weapons, weapons components, weapons-related materials, and their delivery vehicles
 - Facilitate safe and secure transportation and storage of nuclear weapons, weapons components, and their delivery vehicles
 - Prevent the proliferation of nuclear and chemical weapons, weapons components, and weapons-related military technology and expertise
 - Prevent the proliferation of biological weapons, weapons components, and weapons-related military technology and expertise, which may include activities that facilitate detection and reporting of highly pathogenic diseases or other diseases that are associated with or that could be utilized as an early warning mechanism for disease outbreaks that could impact U.S. and allied armed forces
 - Expand military-to-military and defense contacts
- Section 1308(a) of the NDAA, FY 2004, P.L.108-136, 24 November 2003, is also amended to authorize the Secretary of Defense, with the concurrence of the Secretary of State for each project or activity, the use of Cooperative Threat Reduction program funding in states outside of the former Soviet Union.

Title XIV – Other Authorizations

Subtitle A – Military Programs

Drug Interdiction and Counter-Drug Activities, Defense-Wide (Section 1405)

- Authorizes the FY 2008 appropriation of \$938,022,000 for DoD expenses, not otherwise provided for **Drug Interdiction and Counter-Drug Activities, Defense-Wide**.

Title XV – Authorization of Additional Appropriations for Operation Iraqi Freedom and Operation Enduring Freedom

Purpose (Section 1501)

- The purpose of this Title is to authorize appropriations for DoD during FY 2008 to **provide additional funds** for Operation Iraqi Freedom and Operation Enduring Freedom.
- *The Emergency Supplemental Appropriations Act for Defense, 2008*, Division L, P.L.110-161, 26 December 2007, provides the “bridging” portion of this appropriation authorization with the remaining part to be addressed by Congress later in the FY.

Other Department of Defense Programs Section 1510)

- Section 1510(b) authorizes the FY 2008 appropriation of \$257,618,000 for **Drug Interdiction and Counter-Drug Activities, Defense-wide**.

Iraq Freedom Fund (Section 1511)

- Authorizes the FY 2008 appropriation of \$207,500,000 for Iraq Freedom Fund.
- Amounts may be transferred to other specified accounts but not until after a five-day advance notification by the Secretary of Defense to the congressional defense committees.

Iraq Security Forces Fund (Section 1512)

- Authorizes the FY 2008 appropriation of \$3,000,000,000 for the **Iraq Security Forces Fund (ISFF)** for Commander, Multi-National Security Transition Command – Iraq, to provide assistance with Secretary of State concurrence to Iraqi security forces.
- This assistance may include equipment, supplies, services, training, facility and infrastructure repair, renovation, construction, and funding.
- This authority to provide assistance is in addition to any other authority to provide assistance to foreign nations.
- Any funds appropriated by this authority may be transferred to other specified DoD accounts in providing this assistance.
- Funds may not be obligated from the ISFF or transferred to other DoD accounts until five days after the Secretary of Defense notifies the congressional defense committees in writing of the details of the proposed obligation or funds transfer.
- The Secretary of Defense may accept contributions to the ISFF from any person, foreign government, or international organization for the purpose of providing the above authorized assistance.
- The Secretary of Defense shall notify the congressional defense and foreign relations committees in writing of any such contribution identifying the amount, source, and the use of any amount accepted.
 - The Secretary may not accept any contribution if the acceptance would compromise or appear to compromise the integrity of any DoD program.
 - The Secretary shall submit a quarterly report to the congressional defense committees summarizing the details of any obligation or transfer of funds from this fund during the previous quarter.

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- The amounts of funds authorized to be appropriated or contributed during FY 2008 to the ISFF are available for obligation or transfer until 30 September 2009.

Afghanistan Security Forces Fund (Section 1513)

- Authorizes the FY 2008 appropriation of \$2,700,000,000 for the **Afghanistan Security Forces Fund (ASFF)** for the Secretary of Defense with the concurrence of the Secretary of State to provide assistance to the Afghan security forces
- This assistance may include equipment, supplies, services, training, facility and infrastructure repair, renovation, construction, and funds.
- This authority is in addition to any other authority to provide such assistance to foreign nations.
- Any funds appropriated by this authority may be transferred to other specified DoD accounts in providing this assistance.
- Funds may not be obligated from the ASFF or transferred to other DoD accounts until five days after the Secretary of Defense notifies the congressional defense committees in writing of the details of the proposed obligation or funds transfer.
- The Secretary of Defense may accept contributions to the ASFF from any person, foreign government, or international organization for the purpose of providing the above authorized assistance.
 - The Secretary of Defense shall notify the congressional defense and foreign relations committees in writing of any such contribution identifying the amount, source, and the use of any amount accepted.
 - The Secretary may not accept any contribution if the acceptance would compromise or appear to compromise the integrity of any DoD program.
- The Secretary shall submit a quarterly report to the congressional defense committees summarizing the details of any obligation or transfer of funds from this fund during the previous quarter.
- The amounts of funds authorized to be appropriated or contributed during FY 2008 to the ASFF are available for obligation or transfer until 30 September 2009.

Department of Defense Appropriations Act, 2008, Division A, P.L.110-116, 13 November 2007

- Originally reported out of the HAC on 30 July 2007 as H.R. 3222 with H.Rpt. 110-279 and passed by the House on 5 August 2007. The SAC reported out their version of the bill on 14 September 2007 with S.Rpt. 110-155 and passed by the Senate on 3 October 2007. The conference reported out H.R. 3222 on 6 November 2007 with H.Rpt. 110-434. Both houses approved the bill on 8 November 2007 with enactment on 13 November 2007 as P.L.110-116.
- The DoD appropriation for FY 2008 was combined and finally enacted, as Division A, with the second CR for FY 2008, as Division B, extending government spending authority for the other eleven required appropriations through 14 December 2007.

Division A – Department of Defense, 2008

Title II, Operation and Maintenance, Defense-Wide

- Appropriates \$22,693,617,000 for expenses necessary for the operation and maintenance of DoD activities and agencies not otherwise provided for.
- Not more than \$25,000,000 may be used for the **Combatant Commander Initiative Fund (CCIF)** authorized by 10 U.S.C. 166a.
- Not less than \$582,643,000 shall be available only for the **Combatant Commander's Exercise Engagement and Training Transformation (CCEETT)** program.

Overseas Humanitarian, Disaster, and Civic Aid

- Appropriates \$103,300,000 for expenses relating to **DoD Overseas Humanitarian, Disaster, and Civic Aid** programs authorized by 10 U.S.C. Sections 401, 402, 404, 2557, and 2561.
- \$63,300,000 shall remain available until 30 September 2009.
- \$40,000,000 shall be available solely for **foreign disaster relief and response** activities and to remain available until 30 September 2010.

Former Soviet Union Threat Reduction Account

- Appropriates \$428,048,000 to remain available until 30 September 2010 for assistance to the republics of the former Soviet Union for facilitating the elimination and the safe and secure transportation and storage of nuclear, chemical and other weapons; for establishing programs to prevent the proliferation of weapons, weapons components, and weapon-related technology and expertise; for programs relating to the training and support of defense and military personnel for demilitarization and protection of weapons, weapons components and weapons technology and expertise, and for defense and military contacts.
- \$12,000,000 shall be available only to support the dismantling and disposal of nuclear submarines, submarine reactor components, and security enhancements for transport and storage of nuclear warheads in the Russian Far East.
- This program is often referred as the **Nunn-Lugar Program**.

Title VI, Other Department of Defense Programs

Defense Health Program

- Appropriates \$23,458,692,000 not otherwise provided for DoD medical and health care programs.
- Not less than \$8,000,000 under this heading for research, development, test and evaluation shall be available for HIV prevention educational activities undertaken in connection with U.S. military training, exercises, and humanitarian assistance activities conducted in **African nations**.

Drug Interdiction and Counter-Drug Activities, Defense

- Appropriates \$984,779,000 for DoD **drug interdiction and counter-drug activities**; for transfer to appropriations available to the DoD for military personnel of reserve

components serving under the provisions of Title 10 and Title 32 U.S.C.; for operation and maintenance; for procurement; and for research, development, test, and evaluation.

Title VIII, General Provisions

- **Section 8002.** During the current FY, provisions of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the U.S. shall not apply to DoD personnel.
 - Salary increases granted to direct and indirect hire DoD **foreign national employees** funded by this Act shall not be at a rate in excess of the percentage increase authorized by law for DoD civilian employees whose pay is computed under the provisions of 5 U.S.C. 5332, or at a rate in excess of the percentage increase provided by the appropriate host nation to its own employees, whichever is higher.
 - This section shall not apply to DoD foreign service national employees serving at U.S. diplomatic missions whose pay is set by the Department of State under the *Foreign Service Act of 1980*.
 - The limitations of this provision shall not apply to DoD foreign national employees in the **Republic of Turkey**.
 - **Section 8011.** Within the funds appropriated for the operation and maintenance of the armed forces, funds are hereby appropriated pursuant to 10 U.S.C. 401 for **humanitarian and civic costs under 10 U.S.C. Chapter 20**. Such funds may also be obligated for humanitarian and civic costs incidental to authorized operations and pursuant to 10 U.S.C. 401. These obligations shall be reported as required by 10 U.S.C. 401(d).
 - Funds available for operation and maintenance shall be available for providing humanitarian and similar assistance by using **Civic Action Teams in the Trust Territories of the Pacific Islands (TTPI) and freely associated states of Micronesia** pursuant to the Compact of Free Association authorized by P.L. 99-239.
 - When determined by the Secretary of the Army that such action is beneficial for graduate medical education programs conducted at army medical facilities located in Hawaii, the Secretary may authorize the provision of medical services at such facilities and transportation, on a nonreimbursable basis, for civilian patients from **American Samoa, the Commonwealth of the Northern Mariana Islands, the Marshall Islands, the Federated States of Micronesia, Palau, and Guam**.
 - **Section 8023.** During FY 2008, DoD is authorized to incur obligations not to exceed \$350,000,000 for purposes specified in 10 U.S.C. 2350j(c) in anticipation of receipt of contributions only from the government of **Kuwait**. Upon receipt of such contributions, the funding shall be credited to the appropriations or fund which incurred such obligations.
 - **Section 8045.** No funds appropriated or otherwise made available in this Act may be obligated or expended for assistance to the **Democratic People's Republic of Korea** unless specifically appropriated for that purpose.
 - **Section 8048.** No funds available to DoD for any FY for **drug interdiction or counter-drug activities** may be transferred to any other U.S. department or agency except as specifically provided in an appropriations law. Added as a note to 10 U.S.C. 374. No funds available to the CIA for any FY for drug interdiction or counter-drug activities may be transferred to any other U.S. department or agency except as specifically provided in an appropriations law. Added as a note to 50 U.S.C. 403.
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- **Section 8052.** No FY 2008 DoD funds may be obligated or expended to **transfer defense articles or services** (other than intelligence services) to another nation or international organization for below specified activities unless the congressional defense and foreign relations committees are notified fifteen days in advance of the transfer.
 - The specified activities include any **international peacekeeping, peace-enforcement or humanitarian assistance operation**, or similar U.N. activities under an authority of the United Nations Security Council (UNSC) resolution or any other international peacekeeping, peace enforcement, or humanitarian assistance operation.
 - This notification shall include a description of the transfer, value of the transfer, a statement whether the inventory requirements of all elements of the U.S. armed forces, including the reserve components, for the type of transfer have been met; and whether the items to be transferred will have to be replaced. If replacement is required, how does the President propose to provide the funds for such a replacement.
 - **Section 8059.** Notwithstanding any other provision of law, FY 2008 DoD funds shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to **American Samoa**.
 - **Section 8060.** No FY 2008 DoD funds may be used to approve or license the sale of the **F-22A** advanced tactical fighter to any foreign government.
 - **Section 8061.** The Secretary of Defense, on a case-by-case basis, waive with respect to a foreign country each limitation on the procurement of **defense items from foreign sources** provided in law, if determined that the application of the limitation with respect to that country would invalidate cooperative programs entered into between DoD and the foreign country, or would invalidate reciprocal trade agreements for the procurement of defense items entered into under 10 U.S.C. 2531, and the country does not discriminate against the same or similar defense items procured in the U.S. for that country. This section applies with respect to:
 - Contracts and subcontracts entered into on or after enactment of this law, and
 - Options for the procurement of items that are exercised after such enactment date under contracts that were entered into before such enactment if the option prices are adjusted for any reason other than the application of this waiver authority.
 - Waiver does not exist for certain listed items.
 - **Section 8062.** No FY 2008 DoD funds may be used to support any **training program involving a unit of the security forces** of a country if the Secretary of Defense has received credible information from the Department of State that the unit has committed a gross violation of human rights, unless all necessary corrective steps have been taken.
 - The Secretary of Defense in consultation with the Secretary of State shall ensure that prior to a decision to conduct any such training, full consideration is given to all credible information available to the Department of State relating to human rights violations by foreign security forces.
 - After consultation with the Secretary of State, the Secretary of Defense may waive this prohibition if determined such waiver is required by extraordinary circumstance.
 - Not more than fifteen days after the waiver, the Secretary of Defense shall submit a report to the congressional defense committees describing the extraordinary
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circumstances, the purpose and duration of the training program, U.S. and foreign forces involved in the training, and the information relating to human violations that necessitates the waiver.

- **Section 8080.** \$155,572,000 of the FY 2008 DoD funds appropriated under the heading “Research, Development, Test, and Evaluation, Defense-Wide” shall be made available for the **Arrow missile** defense program.
 - \$37,383,000 of this funding shall be made available for the production of Arrow missile components in the U.S. and components and missiles in Israel to meet Israel’s defense requirements, consistent with each nation’s laws, regulations, and procedures.
 - \$20,000,000 of this funding shall be made available for risk mitigation and preliminary design activities for an upper-tier component to the Israeli Missile Defense Architecture.
 - \$37,000,000 of this funding shall be made available for the Short Range Ballistic Missile Defense (SRBMD) program.
- **Section 8103.** Up to \$12,000,000 in funding appropriated under the heading “Operation and Maintenance, Navy” may be made available for the **Asia Pacific Regional Initiative Program** for the purpose of enabling the Pacific Command to execute Theater Security Cooperation activities such as humanitarian assistance and payment of incremental and personnel costs of training and exercising with foreign security forces.
 - This funding made available for this purpose may be used, notwithstanding any other funding authorities for humanitarian assistance, security assistance, or combined exercise expenses.
 - None of this funding may be obligated to provide assistance to a country that is otherwise prohibited by law from receiving such assistance under any other provision of law.
- **Section 8107.** Supervision and administration costs associated with a construction project under appropriations for operation and maintenance, ASFF or ISFF and executed in direct support of the Global War on Terrorism (GWOT) only in Iraq and Afghanistan may be obligated at the time a construction contract is awarded.
 - Administration costs are to include all in-house government costs.
- **Section 8116.** Any FY request for funds after FY 2008 for an ongoing military operation overseas, including in Afghanistan and Iraq, shall be included in the annual budget of the President for such FY.
- **Other Considerations**
 - **Global Training and Equipment** – The HAC provided discussion in H.Rpt.110-279 for refusing to fund the DoD proposal to codify and expand the current DoD “1206” pilot program to \$500,000,000 annually. The current program was originally authorized by Section 1206 of NDAA, FY 2006, P.L.109-163, 6 January 2006, and later amended to the current \$300,000,000 annually in the transfer of defense articles and services to combat terrorism world-wide to expire at the end of FY 2008. The HAC also critically noted the failure by the administration to submit the report on the ability of the DoS and DoD to conduct foreign military assistance programs originally required by the FY 2006 legislation. The SAC S.Rpt.110-155 funded the 1206 program only through the authorized FY 2008 period and stated its belief that any further extension of this program should rest with the DoS and be a part of its future budget.

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- Defense Coalition Support Fund – The HAC also provided discussion in its refusal to fund the DoD proposal for \$22,000,000 to finance the acquisition of defense articles and services in anticipation of temporary use or transfer to eligible countries and international organizations to include the support of coalition or international military stability or counter-terrorism operations. The committee would not fund an unauthorized program.

Division B – Further Continuing Appropriations, 2008

- **Section 101.** Provides for the second CR for FY 2008 by amending P.L.110-92 and extending funding authority for the FY through 14 December 2007.
- Section 106(3), P.L.110-92, 29 September 2007, provided for the first CR for FY 2008 with an initial funding authority through 16 November 2007.
- P.L.110-137, 14 December 2007, provided for the third CR for FY 2008 with an extension through 21 December 2007.
- P.L.110-149, 21 December 2007, provided for the fourth CR for FY 2008 with an extension through 31 December 2007. Passage and enactment of the massive *Consolidated Appropriation Act, 2008*, P.L.110-161, 26 December 2007, took place during the fourth extension period.

Emergency Supplemental Appropriations Act for Defense, 2008, Division L, P.L.110-161, 26 December 2007

- This division provides an overall estimated \$70,000,000,000 in additional funding to the DoD for operations in Southwest Asia and the GWOT. It is often referred to as a “bridge” until a later emergency supplemental appropriation is considered and enacted for the FY. The overall additional amount requested by the administration for all affected agencies, to include DoS and other international operations, is \$196,000,000,000.

Title II, Operation and Maintenance

Operation and Maintenance, Defense-Wide

- Appropriates an additional amount of \$2,116,950,000.
- \$300,000,000 of this funding, to remain available until expended, may be used for payments to **reimburse Pakistan, Jordan, and other key cooperating nations** for logistical, military, and other support provided, or to be provided, to U.S. military operations notwithstanding any other provision of law.
- Such payments may be made in such amounts as the Secretary of Defense, with the concurrence of the Secretary of State and in consultation with the Director of the OM&B, may determine in his discretion based on documentation determined by the Secretary to adequately account for the support provided, and such determination is final and conclusive upon the accounting officers of the U.S.
- This determination is to be fifteen days prior to notification to the appropriate congressional committees.
- The Secretary is to provide quarterly reports to the congressional defense committees on the use of these appropriated funds.

Iraq Freedom Fund

- Appropriates an additional of \$3,747,327,000 for Iraq Freedom Fund to remain available for transfer until 30 September 2009 and only to **support operations in Iraq or Afghanistan**.
 - The Secretary of Defense may transfer these funds to appropriations for the following:
 - Military personnel
 - Operation and maintenance
 - Oversea humanitarian, disaster, and civic aid
 - Procurement
 - Research, development, test, and evaluation
 - Defense working capital fund
 - Not fewer than five days prior to transfer, the Secretary shall notify the congressional defense committees in writing of the detail of any such transfer.
 - And the Secretary shall submit a report no later than thirty days after the end of each fiscal quarter to the congressional defense committees summarizing the details of the transfer of funds from this appropriation.

Afghanistan Security Forces Fund

- Appropriates \$1,350,000,000 for the ASFF to remain available until 30 September 2009.
 - This funding is available to the Secretary of Defense notwithstanding any other provision of law for the purpose of allowing the **Commander, Office of Security Cooperation Afghanistan**, or the Secretary's designee, to provide assistance with the concurrence of the Secretary of State to the security forces of Afghanistan.
 - This is to include the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, and construction and funding. This is sometimes referred to as **"train and equip Afghan forces"** and often executed using non-FMS pseudo LOAs for management and accountability purposes.
 - This authority to provide assistance is in addition to any other authority to provide assistance to countries.
 - The Secretary may transfer any of this funding to appropriations for the following:
 - Military personnel
 - Operation and maintenance
 - Overseas humanitarian, disaster, and civic aid
 - Procurement
 - Research, development, test, and evaluation
 - Defense working capital fund
 - This transfer authority is in addition to any other transfer authority available to DoD.

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- Any contributions of funds for the above stated purposes from any person, foreign government, or international organization may be credited to ASFF and used for such purposes. The Secretary is to notify the congressional defense committees in writing upon receipt and upon transfer of contribution delineating the sources and amounts of the funds received and the specific use of such contributions.
 - The Secretary is to make the same five day and quarterly reports for the ASFF funds as outlined above for the Iraq Freedom Fund.

Iraq Security Forces Fund

- Appropriates \$1,500,000,000 for the ISFF to remain available until 30 September 2009.
- This funding is available to the Secretary of Defense notwithstanding any other provision of law for the purpose of allowing the **Commander, Multi-National Security Transition Command – Iraq (MNSTC-I)**, or the Secretary’s designee, to provide assistance with the concurrence of the Secretary of State to the security forces of Afghanistan.
- This is to include the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, and construction and funding. This is sometimes referred to as “**train and equip Iraqi forces**” and sometimes executed using non-FMS pseudo LOAs for management and accountability purposes.
- Like the just described Iraq Freedom Fund and ASFF, the Secretary may transfer any of this funding to appropriations for:
 - Military personnel
 - Operation and maintenance
 - Overseas humanitarian, disaster, and civic aid
 - Procurement
 - Research, development, test, and evaluation
 - Defense working capital fund
- This transfer authority is in addition to any other transfer authority available to DoD.
- Like ASFF, any contributions of funds for the above stated purposes for ISFF from any person, foreign government, or international organization may be credited to ISFF and used for such purposes. The Secretary is to notify the congressional defense committees in writing upon receipt and upon transfer of contribution delineating the sources and amounts of the funds received and the specific use of such contributions.
- The Secretary is to make the same five day and quarterly reports for the ISFF funds as outlined above for the Iraq Freedom Fund and ASFF.

Title V, Other Department of Defense Programs, Drug Interdiction and Counter-Drug Activities, Defense

- Appropriates an additional \$192,601,000.

Title VI, General Provisions

- **Section 601.** Unless stated otherwise, appropriations in this division are available until 30 September 2008.
- **Section 603.** Upon determination that such action is necessary in the national interest, the Secretary of Defense may **transfer between appropriations** up to \$4,000,000,000 of DoD funds in this division. The Secretary is to promptly notify Congress of these transfers.
- **Section 606.** From the funds made available in this division to DoD, an amount not to exceed \$500,000,000 may be used, notwithstanding any other provision of law, to fund the **CERP** for the purpose of enabling military commanders in Iraq to respond to urgent humanitarian relief and reconstruction requirements within their areas of responsibility by carrying out programs that will immediately assist the Iraqi people, and to fund a similar program to assist the people of Afghanistan. The Secretary of Defense is to submit a quarterly report to the congressional defense committees to include the source of funding and the allocation and use of funds during that quarter under this authority.
- **Section 607.** During FY 2008, DoD operation and maintenance funds may be used, notwithstanding any other provision of law, to provide supplies, services, transportation, including airlift and sealift, and other **logistical support to coalition** forces supporting military and stability operations in Iraq and Afghanistan. Any of course, the Secretary of Defense shall provide a quarterly report to the congressional defense committees regarding the provision of this support.
- **Section 608.** During FY 2008, supervision and administrative costs associated with projects carried out with funds for ASFF and ISFF in this division may be obligated at the time a construction contract is awarded. For the purposes of this section, supervision and administrative costs include all in-house government costs.
- **Section 609.** During FY 2008, the Secretary of Defense must report to Congress every ninety days on the progress towards stability in Iraq. This section contains specific elements required for this periodic report.
- **Section 610.** Each amount appropriated by or otherwise made available by this division is designated as an emergency requirement.
- **Section 611.** No funds appropriated or otherwise made available by this division may be obligated or expended to provide fees to any defense contractor for performance that does not meet the requirements of the contract.
- **Section 614.** Defines the term “congressional defense committees” to include the SASC and Appropriations SAC and the HASC and Appropriations (HAC).

North Atlantic Treaty Organization Freedom Consolidation Act of 2007, P.L.110-17, 9 April 2007

- Introduced as S494 on 6 February 2007 and referred to the Senate Foreign Relations Committee (SFRC). Reported out of the SFRC on 9 March 2007 with S.Rpt.110-34 and passed by the Senate on 15 March 2007. The House promptly passed it on 26 March 2007 without committee action. It was enacted on 9 April 2007 as P.L.110-17.
- This law is to endorse further enlargement of NATO and to facilitate the timely admission of new member nations to NATO.

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- At the Madrid Summit of NATO in July 1997, Poland, Hungary, and the Czech Republic were invited to join NATO.
 - At the Prague Summit of NATO in November 2002, Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovakia, and Slovenia were invited to join NATO.
 - At various summits with the latest being the Riga Summit of NATO in November 2006, the reaffirmation of an open door policy for new NATO membership was again declared. The countries of **Albania, Croatia, Macedonia, Georgia, and the Ukraine** were recognized in their respective progress for future NATO membership.

Designation of Albania, Croatia, Georgia, Macedonia, and Ukraine as eligible to receive assistance under the *NATO Participation Act of 1994* (Section 4)

- Designates all 5 countries to receive U.S. assistance pursuant to Section 203(a), NPA, Title II P.L.103-447, 2 November 1994.
 - This assistance includes grant EDA, IMET, and FMFP.
- Eligible to be designated as full and active participants in the Partnership for Peace (PfP) program pursuant to Section 203(d)(1), NPA.
- The President is not precluded from designating other countries pursuant to Section 203(d)(2), NPA, to likewise receive assistance pursuant to Section 203(a). Section 203(d)(2) designation standards include significant progress toward establishing:
 - Democratic institutions
 - Free market economy
 - Civilian control of the armed forces
 - Rule of law

Authorization of Security Assistance for Countries Designated under *NATO Participation Act of 1994* (Section 5)

- FY 2008 FMFP funding is authorized to be appropriated for assistance to Albania, Croatia, Georgia, Macedonia, and Ukraine.

Department of State Authorities Act of 2006, P.L.109-472 11 January 2007

- Originally introduced in the 109th Congress as H.R. 6060 and referred to the HIRC. The HIRC reported out the bill on 29 September 2006 with H.Rpt. 109-706. The House passed the bill on 8 December 2006 and the Senate approved the bill on 9 December 2006 without amendment. The bill was presented to the President on 3 January 2007 for enactment on 11 January 2007 as P.L.109-472.
- Effective with the 110th Congress and the new Democratic Party majority, the HIRC was renamed the HFAC.

Proliferation Interdiction Support (Section 10)

- The President is to provide a report not later than 180 days after enactment to the congressional foreign relations committees on proliferation and interdiction assistance.
 - The report is to specify in detail, including program cost, on a country-by-country basis, the assistance being provided by the Department of State to train and equip

personnel in foreign countries in the **detection and interdiction of proliferation-related shipments of weapons of mass destruction**, related materials and means of delivery, and dual-use items of proliferation concern.

- The report is also to specify on an agency-by-agency basis funding that is being transferred by the DoS to other agencies to carry out such programs.
- Amends Section 583, FAA, Transit Interdiction, under Chapter 9, “Nonproliferation and Export Control Assistance,” with language to strengthen the provision of such assistance.
- Section 583(a), of the FAA states the following:

. . . the President “shall” (vice “should”) ensure that not less than one-quarter of Chapter 9 assistance is “obligated” (vice “expended”) for the purpose of enhancing the capabilities of friendly countries to detect and interdict proliferation-related shipments of cargo “to non-state actors and states of proliferation concern.” (Vice “that originate from, and are destined for, other countries.”)

- The new Section 583(c), of the FAA: Authorizes the President to conclude agreements, including reciprocal maritime agreements, with other countries to facilitate effective measures to prevent transportation of weapons of mass destruction and related material and delivery systems to non-states and states of proliferation concern.
- The new Section 583(d), FAA: Authorizes the Secretary of State to determine and notify within thirty days that a friendly is eligible for priority consideration of proliferation interdiction support assistance.

Safeguarding and Elimination of Conventional Arms (Section 11)

- The Secretary of State is authorized to secure, remove, or eliminate stocks of **MANPADS, small arms and light weapons, stockpiled munitions, abandoned ordnance, and other conventional weapons**, as well as related equipment and facilities located outside the U.S. that are determined by the Secretary to pose a proliferation threat. This may include the following:
 - Humanitarian demining activities
 - Elimination or securing MANPADS and other conventional weapons
 - Assistance to countries in the safe handling and proper storage of MANPAD and other conventional weapons
 - Cooperative programs with NATO and other international organizations to assist other countries in the safe handling and proper storage or elimination of MANPADS and other conventional weapons
 - The use of funds for the elimination or safeguarding of MANPADS and other conventional weapons
 - Activities to secure and safeguard MANPADS and other conventional weapons
 - Actions to ensure that equipment and funds, including security upgrades at locations for the storage or disposition of MANPADS and other convention weapons and related equipment that are determined by the Secretary of State to pose a proliferation threat, continue to be used for authorized purposes

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- Nothing in this section shall be construed to affect the authorities of the Secretary of Defense.

Imposition of Sanctions to Deter the Transfer of Man-Portable Air Defense System (Section 12)

- If the President determines that a foreign government **knowingly transfers MANPADS** to a foreign government determined by the Secretary of State to be a repeated provider of support for acts of international terrorism [Section 620A, FAA, or Section 40, AECA], or to terrorist organizations, U.S. assistance shall be terminated, to include:
 - All FAA-authorized assistance, except humanitarian assistance.
 - All FMS to include defense articles, services, and design and construction services.
 - All DCS licensing of any item on the USML.
- This sanctioning action of the transferring country can be waived if the President determines and certifies to the congressional foreign relations committees that terminating the assistance, sale, license, or financing would not be in the U.S. national security interest.

Additional Authorities (Section 13)

- Regarding **war reserves stockpile to Israel**:
 - Amends the *DoD Appropriations Act, 2005*, P.L.108-287, 5 August 2004, extending to 5 August 2008 the authority to transfer certain defense articles to stockpiles in Israel in exchange for negotiated concessions.
 - Amends Sections 514(b)(2)(A) and (B), FAA, authorizing up to \$200,000,000 (vice \$100,000,000) in stockpiles of defense articles annually during FY 2007 and FY 2008 in Israel. This is retroactive to take effect on 5 August 2006.
 - These amendments essentially authorizes the transfer of war reserve stockpiles of armor, artillery, automatic weapons ammunition, missiles, and other munitions to Israel during FY 2007 and FY 2008 of a total value up to \$400,000,000 with the transfer to take place not later than 5 August 2008. The items to be transferred do not have to be originally stockpiled in Israel.
- Amends “Loan Guarantees to Israel” authorized by *Emergency Wartime Supplemental Appropriations Act, 2003*, P.L.108-11, 16 April 2003, extending the period of **loan guarantee offer to Israel** of up to \$9,000,000,000 by four years to now 30 September 2011. \$3,000,000,000 was to be issued prior to 1 October 2003, or thereafter and of which \$3,000,000,000 may be issued subsequent to now 30 September 2011 (vice 2007).

Implementing Recommendations of the 9/11 Commission Act of 2007, P.L.110-53, 3 August 2007

- Introduced in the House on 5 January 2007 as H.R. 1 to provide for the implementation of the recommendations of the National Commission on Terrorist Attacks on the U.S. It was passed by the House on 9 January 2007 and was not immediately by the Senate until 9 July 2007. The conference report was filed on 25 July 2007 as H.Rpt. 110-259. The Senate and House approved the conference report respectively on 26 and 27 July 2007. It was enacted on 3 August 2007 as P.L.110-53.

Title XIX – International Cooperation on Antiterrorism Technologies

Promoting Antiterrorism Capabilities through International Cooperation (Section 1901)

- Amends Title III of the *Homeland Security Act of 2002*, P.L.107-296, 25 November 2002, by adding a new Section 317 to establish the Science and Technology Homeland Security International Cooperative Programs Office.
- The director of this new office is responsible for developing understandings and agreements to support **international cooperative activity in support of homeland security** in coordination with the DoS, DoD, Department of Energy and other agencies. The director shall develop strategic priorities for international cooperative activities.
- Activities include mechanisms such as grants, cooperative agreements, and contracts with foreign public or private entities or governmental organizations.
- Funding and resources for all international activities must be equitably matched by the foreign partner government or other entity through direct funding, funding of complimentary activities, or provision of staff, facilities, material or equipment. Any foreign reimbursement or contributions received from a partner nation to meet its share of the project may be credited to appropriate current appropriations accounts of the Department of Homeland Security, Directorate of Science and Technology.
- The director shall submit a report to Congress not later than 2 August 2008, and every five years thereafter, describing each grant, cooperative agreement, or contract to include participants, goals, expected duration, amount and sources of funding, including resources provided to support the activities in lieu of direct funding.
- Foreign partners may include **Israel, United Kingdom, Canada, Australia, Singapore, and other allies** in the GWOT as determined by the Secretaries of Homeland Security and State.

Title XX – 9/11 Commission International Implementation

- Enacted as Title XX, Sections 2001-2043, *9/11 Commission International Implementation Act of 2007*.

Subtitle D, Strategy for the United States Relationship with Afghanistan, Pakistan, and Saudi Arabia

Afghanistan (Section 2041)

- Urges the reauthorization and updating of the *Afghanistan Freedom Support Act of 2002*, P.L.107-327, 4 December 2002, which expired 30 September 2006.
- This special authority with a current ceiling of \$55,000,000 (per P.L.108-287) for the drawdown of defense articles, services, and training for the government of Afghanistan and countries and international organizations for specific use in restoring and maintaining peace and security in Afghanistan has not be reauthorized.
- Congress found that the police training programs in Afghanistan have achieved far less return on substantial investment and the President shall, on an urgent basis, make increased efforts to:
 - Dramatically improve the capability and effectiveness of U.S. and international police trainers, mentors, and police personnel.

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- Increase the numbers of such trainers, mentors, and personnel only if determined such increase would improve the performance and capabilities of the Afghan civil security forces.
 - Assist the government of Afghanistan in conjunction with the Afghan civil security forces and their leadership to address the corruption crisis.
 - The President is to report to the appropriate congressional committees not later than 180 days after enactment, and every six months thereafter until 30 September 2010, on U.S. efforts to fulfill requirements of this section.
 - On 28 September 2007, the President delegated this reporting requirement to the Secretary of State in consultation with the Secretary of Defense.

Pakistan (Section 2042)

- Congress recognized the importance of the government of Pakistan as a critical ally and important partner in removing the Taliban regime in Afghanistan and combating al Qaeda. Congress found that several publicly-stated goals of the government of Pakistan and the national security interests of the U.S. are in close agreement, as outlined in Section 2042(a)(4) along with opportunities for increased assistance by the U.S. and increased commitment by Pakistan in Section 2042(a)(5).
 - Pursuant to Section 2042(c), the President is to submit not later than 90 days after enactment to the appropriate congressional committees, a long-term strategy of the U.S. to engagement with Pakistan to achieve the stated goals.
 - On 28 September 2007, The President delegated this reporting requirement to the Secretary of State.
 - Pursuant to Section 2042(d)(1), for FY 2008, **no military assistance** authorized by Part II, Chapter 2, of the FAA, Section 23, AECA [FMFP], or license for any item controlled by the AECA; may be approved for Pakistan until the President provides a determination to the appropriate congressional committees that the government of Pakistan:
 - Is committed to eliminating from Pakistani territory any organization such as the Taliban, al Qaeda, or any successor, engaged in military, insurgent or terrorist activities in Afghanistan
 - Is undertaking a comprehensive military, legal, economic, and political campaign to achieving the above elimination
 - Is currently making demonstrated, significant, and sustained progress toward eliminating support or safe haven for terrorists
 - On 28 September 2007, the President delegated this determination requirement to the Secretary of State
 - Section 2042(f) authorizes the appropriations of funding for assistance to Pakistan in achieving the goals of above Section 2042(d)(1).
 - Section 2042(g) amends Sections 1(b), 3(2), and 6, P.L.107-57, 27 October 2001, authorizing **waiver of the annual Brooke Amendment and Military Coup restrictions** as they pertain to Pakistan during FY 2007 and FY 2008.
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Saudi Arabia (Section 2043)

- Congress found the 9/11 Commission concluded that the Kingdom of Saudi Arabia being a problematic ally in combating Islamic extremism. Congress also found that, while at the level of high policy, Saudi Arabian leaders have been cooperative with U.S. diplomatic initiatives aimed at the Taliban. Saudi Arabian society was a place where al Qaeda raised money directly from individuals and through charities. Congress stated that it is U.S. policy:
 - To engage the government of Saudi Arabia to openly confront the issue of terrorism, as well as other problematic issues such as the lack of political freedom
 - To enhance counterterrorism cooperation with the government of Saudi Arabia
 - To support the efforts of the government of Saudi Arabia to make political, economic, and social reforms, including greater religious freedom, throughout the country
- Not later than 180 days after enactment, the President shall transmit a report, with a classified annex if necessary, to the appropriate congressional committees to include:
 - A long-term U.S. strategy:
 - To engage the government of Saudi Arabia to facilitate political, economic, and social reforms including greater religious freedom that will enhance the ability of the government to combat international terrorism
 - To work with the government of Saudi Arabia to combat terrorism, including through effective measures to prevent and prohibit the financing of terrorists by Saudi institutions and citizens
 - An assessment of progress made by Saudi Arabia since 2001 on matters described in the above strategy including:
 - Whether Saudi Arabia has become a party to the International Convention for the Suppression of the Financing of Terrorism
 - The activities and authority of the Saudi Nongovernmental National Commission for Relief and Charity Work Abroad.
 - On 28 September 2007, the President delegated this reporting requirement to the Secretary of State.

Conclusion

This year's article for FY 2008 includes a summary of seven pieces of legislation that impacted U.S. international programs especially those of security assistance and cooperation. However, the DoS initial funds allocation report required by Section 653(a), FAA, was not available by press time for the article.

Among the significant items within S/FOAA for FY 2008 were IMET funding to remain available for an additional four years, the anti-personnel landmine transfer prohibition being extended by six years to now October 2014, tighter restrictions for the transfer of cluster munitions, and no assistance to countries that recruit or use child soldiers.

Items of interest within the NDAA for FY 2008 include more emphasis on DoD contractor compliance with export laws and regulations, the addition of Mexico and the Dominican Republic as eligible countries for "1033" counter-narcotics assistance, \$75 million of DoD O&M authorized

for counterterrorism assistance to Pakistan along the Afghanistan border region, the FY 2006 “1207” Security and Stabilization Assistance program extended through FY 2008, required Comptroller-General assessments of the USD(P) reorganization and the GPOI program, the removal of ASPA military assistance prohibitions, the establishment of a registration and monitoring system for small arms in Iraq, the FY 2007 SME loan program being extended through FY 2009, and the FY 2008 authority to appropriate \$2.7 billion for the ASFF and \$3 billion for the ISFF.

The FY 2008 *DoD Appropriations Act* continued to prohibit the export of the F-22 and provided \$130 million for overseas humanitarian, disaster, and civic aid programs. The FY 2008 emergency supplemental or “bridging” appropriation of \$75 billion for DoD included \$1.35 billion for the ASFF and \$1.5 billion for the ISFF.

Albania, Croatia, Georgia, Macedonia, and the Ukraine are now identified as eligible to receive U.S. assistance pursuant to the NPA of 1994. These five countries are also eligible to be designated as full and active participants in the PFP program.

Items of interest within the *Department of State Authorities Act of 2006* include authority for DoS to secure, remove, or eliminate stocks of undesired weapons and ordnance to include MANPADS and small arms, authority to prohibit military assistance to a government that knowingly transfers MANPADS to terrorists or governments supporting terrorism, extending the authority to transfer war reserve stocks to Israel, and extending the FY 2003 authority for loan guarantees to Israel through FY 2011.

The *Implementing Recommendations of the 9/11 Commission Act of 2007* includes the DHS establishing a Science and Technology directorate for international cooperative activities, prohibiting FY 2008 assistance to Pakistan until it is determined that Pakistan is committed, undertaking, and progressing in the elimination of organizations engaged in terrorist activities in Afghanistan, and authorizes the presidential determination to waive the Brooke Amendment and Military Coup prohibitions for assistance to Pakistan.

The FY 2008 CBJ for foreign operations of February 2007 included \$1.37 billion identified by DoS as an initial emergency supplemental request for FY 2008 in addition to the scheduled budget request for FY 2008. The emergency supplemental included \$1.111 billion in ESF for Iraq and Afghanistan. This entire FY 2008 CBJ document can be viewed at <http://www.state.gov/documents/organization/80701.pdf>.

On 22 October 2007, the Administration requested a second emergency supplemental appropriation for FY 2008 to include \$45.9 billion for the GWOT and DoD operations in Iraq and Afghanistan. This includes \$3.6 billion for the DoS and international operations to increase ESF by \$1.1 billion generally for Iraq, Afghanistan, and Pakistan, North Korea, the Palestinian Authority, and Sudan. This brings the total ESF emergency supplemental for FY 2008 to \$2.2 billion. It also included \$575 million for INCLE most of which is for the new \$550 million Mexico and Central America Security Initiative. No FMFP or IMET funding was requested as an emergency supplemental during FY 2008. The overall 22 October 2008 request can be viewed at http://www.whitehouse.gov/omb/budget/amendments/amendment_10_22_07.pdf. The DoS provided a supporting *Supplemental Appropriations Justification for FY2008* which can be viewed at <http://www.state.gov/documents/organization/94433.pdf>

The Administration’s CBJ document for FY 2009 foreign operations includes the following:

- \$4.812 billion for FMFP, \$90.5 million for IMET
- \$3.154 billion for ESF

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- \$247.2 million for PKO
 - \$275.6 million for SEED Act assistance
 - \$346.1 million for FREEDOM Support Act assistance
 - \$1.202 billion for INCLE assistance
 - \$406.8 million for ACI assistance
 - \$499 million for NADR assistance

The FY 2009 CBJ along with those from the recent past can be viewed at <http://www.state.gov/s/d/rm/rls/cbj/>.

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This article has been placed on the DISAM web page. It is located at <http://www.disam.dsca.mil/pubs/USG/USGPubs.htm> under “legislative affairs” along with other security assistance-related material to include the legislation material from prior FYs.

About the Author

Ken Martin has been at DISAM for over nineteen years as an associate professor for the management of security assistance. In addition to teaching, his duties include being the legislation and policy functional manager and the editor for the annually republished DISAM “green textbook,” *The Management of Security Assistance*. He is a retired U.S. Navy surface warfare officer. His education includes an undergraduate degree in the field of economics from the Illinois Institute of Technology in Chicago and a masters degree in administration from Central Michigan University.